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BIOGRAPHICAL SKETCHES.

BY

NASSAU W. SENIOR.

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PREFACE.

THIS volume contains the biographical papers which I have published during a period of more than twenty years. I have arranged them, not according to their dates, but to their subjects. The first part, containing the lives of M. Berryer the elder, and M. Tronson du Coudray, relates to the history of France from the end of the reign of Louis XV. to the beginning of that of Louis Philippe.

The second part, taken from Lord Campbell's Chief Justices and from German authorities, consists of sketches of remarkable judges and of remarkable criminals.

The third part contains miscellaneous sketches. I have entitled the work Biographical Sketches because that title designates its contents. They are not portraits. They do not attempt to give complete, or even detailed delineations of the persons who are

their subjects. All that I proposed to myself in writing them was to describe some of the most striking features of some remarkable men and of some remarkable states of society. With few exceptions, my subjects have been either lawyers or persons with whom lawyers have had to deal. I believe that nothing throws so much light on the state of society at any given time as what was then passing in its courts of law. With the exception of M. de Tocqueville's immortal book, I know of no writings which describe the state of France before and during the Revolution more vividly than the anecdotes told by Berryer and Tronson du Coudray.

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BIOGRAPHICAL SKETCHES.

BERRYER.*

[Edinburgh Review, October 1842.]

AUTOBIOGRAPHIES may be divided into two classes: those which interest principally as a history of the mind of the writer, and those which derive their chief value from the events which they relate, or from the persons whom they describe. The first class require the union of several rare conditions. Few men know their own history. Few men know the fluctuating nature of their own character; — how much it has varied from ten years to ten years, or even from year to year; or what qualities it would exhibit in untried circumstances, or even on the recurrence of similar events. Few men attempt to distinguish between the original predispositions and the accidental influences which, sometimes controlling and sometimes aggravating one another, together formed at any particular epoch their character for the time being. Still fewer attempt to estimate the relative

* 'Souvenirs de M. Berryer.' 2 vols. 8vo. Paris, 1839.

force of each; and fewer still would succeed in such an attempt. The conversations, the books, the examples, the pains and the pleasures which constitute our education, exert an influence quite disproportioned to their apparent importance at the time when they occurred. Such influences operate long after their causes have been forgotten. The effects of early education are confounded with natural predisposition, and tendencies implanted by nature are attributed to events which were merely the occasions on which they burst forth. The bulk of men think of their minds as they think of their bodies: they enjoy their strength and regret their weakness; they dwell with pleasure on the points in which they are superior to others, and with pain on those in which they are inferior; but they cannot account for the one or for the other. They know no more of the causes of their talents or of their morals, than they do of those of their beauty or of their vigour.

Again: among the few who have the power to relate their mental history, few indeed have the wish. Most men dread the imputation of egotism or vanity. Most men, too, are aware that a full narrative of their feelings, wishes, and habits, must frequently excite the disapprobation of a reader. 'Each mind,' says Foster, 'has an interior apartment of its own, into which none but itself and the Divinity can enter. In this retired place the passions mingle and fluctuate in unknown agitations. There, all the fantastic and all the tragic shapes of imagination have a haunt where they can neither be

invaded nor descried. There, the surrounding human beings, while quite unconscious of it, are made the subjects of deliberate thought, and many of the designs respecting them revolved in silence. There, projects, convictions, vows, are confusedly scattered, and the records of past life are laid. There, in solitary state, sits conscience, surrounded by her own thunders, which sometimes sleep, and sometimes roar, while the world does not know.' *

Men are unwilling to reveal, even posthumously, the secret which a whole life has been employed in concealing. Even those who could bear to excite disapprobation are afraid of ridicule, and perfect frankness is certain to be absurd. We do not believe that a really unreserved autobiography has ever been written. Rousseau's appears to approach most nearly to one. Almost every chapter tends to make the writer hateful, contemptible, or ridiculous. And yet we now know that even the 'Confessions' are not to be depended upon. We now know that much has been concealed, and that much has been positively invented.

Under these circumstances, autobiographies of the first class are almost as rare as epic poems; but those of the second class — those which amuse or instruct as pictures of the events and of the people among whom the writer lived — are among the most abundant products of modern literature.

It is remarkable, however, that while soldiers, statesmen,

* Foster's 'Essays,' p. 41.

diplomatists, men of letters, actors, artists, courtiers — in short, almost all classes who have something to tell, and who have been accustomed to notoriety — have been anxious to relate their own story to the public, one body of active men, though ready enough to talk of others, have been almost uniformly silent as to themselves. With the exception of the beautiful fragments by Sir Samuel Romilly—and they belong rather to the former class of autobiographies, and of the work the title of which we have prefixed to this article—we scarcely recollect an instance in which a Lawyer, either British or foreign, has thought fit to be his own biographer.*

And yet there are scarcely any persons the result of whose experience would be more instructive; since there are none who obtain so close or so undisturbed a view of human nature. In courts, in public assemblies, in business, in society, men are masked, and they generally believe that their success depends on their disguise. But few men think that anything is to be gained by deceiving their lawyer. He is not their rival, but their instrument. His skill is to extricate them from difficulties where they know neither the amount of the danger nor the means of escape. He is to be the tool of their avarice or of their revenge. They generally know that, in order to enable him to execute their purposes, they must stand naked before him; and even when they are absurd enough to

* Since these pages were first printed Sir George Stephen has published, in his 'Adventures of an Attorney in search of Practice,' a most curious and instructive legal autobiography.

attempt concealment, his experience almost uniformly detects it.

These remarks, however, do not apply to the bar of England or of Scotland. The professional rule which excludes counsel from the real client, except in the presence of the client's solicitor, deprives our barristers of almost all these peculiar opportunities of observation. But on the Continent, not only does no such rule exist, but the counsel appear to perform almost all the duties which with us are confined to the solicitors. We shall find M. Berryer receiving his clients, calling on them, travelling with them, obtaining evidence—in short, acting almost always in the double capacity of counsel and attorney. This circumstance adds greatly to the interest of his memoirs, and appears also to have added greatly to the interest of his professional life. His clients, instead of being mere names to be forgotten as soon as the suit should terminate, became his friends and associates. Unhappily, indeed, the miserable period through which he lived made such intimacies often a source of pain. They naturally included the men most eminent in commerce, manufactures, and banking; and those were precisely the persons whom the anarchists thought fit to suspect at a time when suspicion was death.

M. Berryer's memoirs belong to the second class of autobiographies—those in which the attention is fixed, not on the author, but on the objects which surround him. M. Berryer's professional life endured sixty-four years, from 1774 to 1838—the most remarkable period in the

history of France, perhaps in the history of the world. It extended through the delusive calm of the unreformed royalty, the brief attempt at constitutional monarchy under the Constituent Assembly, the anarchy under the Legislative Assembly and the Convention, the base tyranny of the Directory, the restorative interval of the Consulate, the glories and despotism of the Empire, the impotent reaction of the Restoration, and the intrigues and corruption of the kingdom of the French.

The other institutions of the country were still more unstable than its government. M. Berryer found the Roman Catholic religion established with vast wealth and exclusive domination. It is now one among several sects acknowledged and salaried by the State. During the interval its priests have been despoiled, transported, and massacred; every form of worship has been abolished; and it depended on one man whether France should be Protestant or Catholic. All the laws regulating the nature, the enjoyment, the exchange, and the devolution of real and personal property — the laws of marriage, of divorce, of legitimacy, of adoption, and of inheritance — the franchises and privileges of individuals, and of bodies politic — in short, all the rights of persons and of things, while M. Berryer was engaged in enforcing them, were altered, abolished, restored, and amended, by a legislation so transitory as really to deserve to be called, as he has called it, ephemeral.

The criminal law was equally fluctuating. New crimes, new modes of trial, new rules of evidence, new tribunals,

and new punishments, were invented, repealed, renewed, and modified, as it suited the convenience of a party, a faction, or an individual. A similar fate befell the law of procedure. Within two years from the meeting of the first National Assembly, not a court in which M. Berryer had practised during the first fifteen years of his professional life was in existence. Soon afterwards, the order of which he was a member was abolished, and the law ceased to be a profession.

For some years, again, there was no standard of value. To use, or even to possess, metallic money, was a capital crime, and the only legal tender, the assignat, sank to about one four-hundredth part of its nominal value. The seller of a commodity was no longer allowed to fix its price: the price was to be determined by a committee, with reference solely to the ability of purchasers, whether the dealer could afford to sell at that price or not. To discontinue, or even to diminish, any accustomed trade, was to incur the crime of being 'suspected;' and to be suspected was to be imprisoned; to be imprisoned was at one period to be massacred, and at another to be guillotined.

The picture of a society subjected to such influences is most valuable, and no one had a better opportunity of drawing it than M. Berryer. He had for materials not only his own experience, but that of his clients, and of clients taken from every class of society.

His recollections, as might be expected from a writer of his advanced age, seem to be more vivid as they recede

towards the past. His first consultation in the dressing-room of the Duchess of Mazarin, where the aristocratic beauty, surrounded by her maids, and going through the details of her complicated toilette, listened to the conference between the timid junior and Gerbier, the leader of the bar; his first pleading in the Grand Chamber of the Parliament of Paris, its vaulted roof dimly illuminated at a seven o'clock sitting on a winter's morning, and the profound silence of the court, which awed him until he fainted; his first negotiation in the moated château of a feudal magistrate, while his client was concealed in the avenue;—all these scenes are dwelt upon with a minuteness of detail and brilliancy of colouring which gradually disappear as he approaches the modern part of his narrative. Of this, however, we do not complain. Equality is not picturesque: a society in which it prevails may sometimes be good to live in, but can seldom be good to describe; and we shall imitate our author in drawing our materials rather from the eighteenth century than from the nineteenth.

M. Berryer was born in the year 1757 at St. Ménéhould in Champagne, a small town of 3,000 inhabitants, which seems to have been a nest of lawyers, since it contained nine different courts, and all the accessories of *avocats*, *notaires*, *procureurs*, and *greffiers*.* In September 1774 he commenced his legal studies in the office of a solicitor to the *Parlement de Paris*, which then extended its

* Vol. i. p. 41. M. Berryer expresses a *naïve* regret that all the work is now done by a single tribunal.

jurisdiction over the greater part of France. The state of the law was such as might have been expected in a system created, not by statesmen, but by lawyers. 'The forms of procedure,' says M. Berryer, 'were operose and intricate, and to prolong and complicate their entanglement was the business and the pride of the practitioner. Many suits were eternal; they descended from the solicitor who commenced them to his successors, or rather to generations of successors, as the property — the patrimony of the office.'* The number of persons supported by this legal property was enormous. The Grand Châtelet, an inferior court having jurisdiction only over a part of Paris, gave occupation to nearly 300 attorneys.†

M. Berryer was admitted to the bar in 1778. One of the first transactions in which he was engaged is so striking an instance of the pride and the despotism of the aristocracy of France, as it then was, that we shall relate it at some length.

M. du B——, a man of considerable fortune, was a member of the provincial parliament of Normandy. In 1771, when the parliaments were exiled by Louis XV., he retired to Holland, leaving his affairs under the management of his wife, who, together with his son, a young man of twenty-two, resided in one of the country mansions of the family, a few leagues from Rouen. In that reign, and in that country, to be out of favour with the government was almost an exclusion from society. Neither neighbours, friends, nor even relations, visited the château, and the

* Vol. i. p. 24. † Ibid. p. 29.

young man, solitary and unemployed, fell in love with his mother's maid. The mother's consent was obtained; her general powers of acting for her husband were supposed to enable her to give the father's assent, and the marriage took place in the chapel of the château. Two children were born, when, in 1774, the parliaments were recalled, and M. du B—— returned. His daughter-in-law and her children fled before him and took refuge in England. The son, now in his twenty-sixth year, remained. M. du B—— required him to take proceedings to annul the marriage; and on his refusal obtained a *lettre de cachet*, under which he was confined in the prison of St. Yon. The father visited him in his cell on the second floor of one of the towers. What passed between them is not known; but the result of the interview was, that as the father was descending the staircase, the son threw himself from the window, and was found by the father on the pavement of the court, with a fractured limb and a concussion of the brain. It does not appear that the father was softened, but the government was induced, by the horror of the catastrophe which its interference had occasioned, to revoke the *lettre de cachet*. The son, at liberty, but a cripple for life, fled to join his wife and children in England. In London, however, they must all have starved, or have had recourse to parish relief, unless a M. Tubeuf, a French jeweller, established in England, had supported them. M. Tubeuf's advances for this purpose amounted during four years to about 1,200*l*. They were made at the request of

the mother, and with the knowledge of the father, but without his express authority.

M. Tubeuf returned to France, demanded repayment from the father, was refused, commenced a suit against him in the Parliament of Paris, and engaged M. Berryer as his counsel. The first step was to obtain an order for the examination of M. du B—— on interrogatories — an order which was made, as of course, without notice to the party to be examined. Armed with this order, M. Berryer and M. Tubeuf travelled to the château of the magistrate. When they entered its long avenue, the carriage with M. Tubeuf was left concealed by the trees, and M. Berryer proceeded on foot. The first person whom he saw was Madame du B——. But such was the awe inspired by the domestic despot, that she would not venture even to hint to her husband the object of M. Berryer's mission. He was forced, therefore, to explain it himself, and to communicate to M. du B—— the astonishing fact that MM. de Paris, his brethren, had subjected him to a public examination. The result, however, was, that the fear of an open discussion prevailed, where justice, compassion, and natural affection had all been powerless. M. Tubeuf was sent for, and before they re-crossed the drawbridge all had been arranged. Sixty years afterwards M. Berryer again visited Rouen as an advocate, and the matter was again a family contest originating in aristocratic pride. The château and family of B—— had long disappeared. M. Berryer interested his audience by a narrative of which he was probably the only depository; and urged them to

crown his second appearance in their country with equal success.

As a further illustration of the morals of the old *régime*, we shall introduce in this place the notice of a more important cause of M. Berryer's, though it terminated at a later period of his career — that of Madame de Pestre de Seneffe. When the events which we have to relate commenced, she was between fifty and sixty years old, and resided at Brussels, a widow with seven children, and a still more numerous progeny of grandchildren; enjoying a high reputation, and a large jointure derived from property in Belgium and in France. At a supper in the palace of the Prince de Soubise, a set of Parisian fashionables resolved that one of them should proceed to Brussels and marry the opulent widow. The necessary funds were supplied by a contribution, and the choice of the emissary was left to chance. The lot fell upon the Comte de Wargemont, a man of high family, and of considerable property, heavily encumbered.

On his arrival at Brussels he introduced himself to Madame de Pestre, and secured the services of her maid and of her confessor. The maid concealed him one evening in her mistress's bedroom. In the middle of the night he showed himself. Madame de Pestre called for assistance. This was the signal for the appearance of the maid, who urged on her mistress the danger to her reputation of an *éclat*, and proposed that the advice of the confessor should be taken. The Count protested that his indiscretion had been forced on him by the violence of

his passion; and the confessor recommended that all scandal should be avoided by an immediate marriage. Madame de Pestre was weak enough to consent; but as she yielded, not to love, but to fear, she insisted that the marriage should take place in Brussels, that she and all her estates should continue subject to the laws of Flanders, that her husband should have no power to require her to enter France, that she should continue absolute mistress of her property, and that the only benefit derived by the Count should be a life income of 20,000 francs, and 100,000 francs as capital.

The marriage on these terms took place in February 1776.

The husband almost immediately quitted his wife, and in June wrote to ask her whether she could suppose that he had any motive for marrying an old woman except the full command of her fortune. A few days afterwards he informed her that he intended to seize all her property in France, and to force her to join him there. His attempts to execute these threats produced a compromise, in pursuance of which a divorce *à mensa et thoro*, in a suit instituted by the husband, was pronounced by the ecclesiastical tribunal of Mechlin; and the Count, in exchange for all his claims under the marriage or the settlement, received 350,000 francs and an annuity of 10,000 more.

The 350,000 francs, however, were soon spent, and the Count renewed his legal warfare. He attempted to set aside the divorce, succeeded in getting possession of the

French estates, and kept up a never-ending litigation respecting those in Belgium. Madame de Pestre died, worn out with care and vexation. The annexation of Belgium rendered the whole property of her children subject to the jurisdiction of the French laws, and the Count spent the remainder of his life in prosecuting them from tribunal to tribunal. M. Berryer was counsel for Madame de Pestre and for her descendants; and he dwells upon his exertions in their cause as one of the most arduous and one of the most brilliant parts of his professional career. They procured him on one occasion a curious testimony of admiration. M. de Wargemont was dead, and his sister, Madame de Querrieux, had succeeded to some of his claims, and apparently to some of his litigiousness. As her brother's representative, she prosecuted an appeal against the Pestre family. An elderly lady sat behind M. Berryer while he conducted the defence. She was observed to listen with great emotion, and as soon as he sat down, pressed him to accept, as a mark of her admiration, a ring made of the hair of her youth.

The episode of Madame de Pestre has led us to anticipate a portion of M. Berryer's history. Nature had given him the bodily qualifications most useful to an advocate—a fine voice, and health independent of exercise. In the strict discipline of a procureur's office, where the hours of business, with a few minutes' interval for breakfast and an hour for dinner, lasted from between six and seven in the morning till nine at night, he acquired intrepid diligence and the love of a sedentary life. He was stimulated, too,

he tells us,* by the splendid pecuniary rewards of the profession. He saw Gerbier receiving 300,000 francs for a single cause, and Duvaudier's exertions in securing a jointure, paid by an equipage and an annuity of 4,000 francs for its support. He began early to emancipate himself from the procureur by obtaining a set of clients of his own. He succeeded first in becoming counsel to the eminent merchants constituting the India Company, in a cause which lasted many years; then in getting the conduct of a claim depending on an ancient pedigree, which appears to have remained undisposed of for more than twenty years; and lastly, in obtaining as his clients the two great ecclesiastical chapters of Brioude and Bourges. His marriage in January 1789 with Mademoiselle Gorneau, whose father, as *Procureur aux Conseils*, had for his clients the chief bankers and merchants of Paris, placed him at once in possession of the first mercantile practice. The heads of the great houses became his clients and his friends; and we may judge of the extent of litigation in which they were engaged, when we are told that one of them, M. Magon de la Balue, paid him a daily visit.†

It does not appear that, when he married, he was aware that a time was approaching when the bravest man might wish to have no safety to provide for but his own. He had, indeed, been somewhat surprised, but not disquieted, by the anti-monarchical spirit of the press, and had felt some alarm at the opposition of the parliaments

* Vol. i. p. 87.

† Vol. ii. p. 325.

to the court; but his fears did not exceed a vague uneasiness.

The extent of his political sagacity may be estimated by the three causes, to which even now, after fifty years' experience, he assigns the Revolution;—namely, financial difficulties, which he thinks might have been got out of by economy; the contest between the parliaments and the crown; and the reduction of a portion of the household troops.

His fears, however, were soon to be awakened. On the evening of Sunday, July 12, he was returning with his young wife from a country holiday—that day was, in fact, the last but one of the monarchy—but so little were they aware of the real nature of the events which had disturbed the previous weeks, that they felt, as he tells us, perfect security. But at the Barrière du Trône, they heard of the sanguinary conflict between the Royal Allemand and the procession carrying the busts of Orleans and Necker; and as they passed the paper manufactory of Réveillon they saw the gates guarded by soldiery, and were told that behind them lay the bodies of those who had perished in the attack on the building. Two mornings after,* M. Berryer was roused from his bed by the tocsin; he was summoned, by what authority he does not know, to a meeting of the inhabitants of his parish, in the church of

* M. Berryer's recollection has misled him as to these dates. He supposes the storming of the Bastile to have taken place on the Monday, and therefore that Sunday was the 13th. But in fact Sunday was the 12th, and a day intervened between the riot of that day and the insurrection of the 14th.

St. Méry. He found there crowds as ignorant of the cause of their assembling as himself. For hours they wandered, without an object, up and down the aisles of the church. At length some persons talked of organising the parish as a municipal body. M. Berryer suggested the means to those about him — they carried him to the pulpit, and thence he proposed his plan, which was to divide the parish into quarters, or, as we should call them, wards; the inhabitants of each ward grouping themselves round a particular pillar; and then, that each ward should present a list of six persons, to constitute the *bureau* or common council of the parish — one being the president and another the secretary. His plan was adopted by acclamation; he refused the office of president, but accepted that of secretary. The *bureau* was elected, and directed to provide for the civil and military organisation of the parish.

In the evening the *bureau* assembled; M. Berryer was quietly engaged in his duties as secretary; it was hot, and the windows were open, when some pikes bearing bloody heads were thrust in, and they were told that one was that of Launay, and that the others were those of the Swiss massacred within the Bastile. This horrible incident influenced permanently the fortunes of M. Berryer. With his talents and his advantages, it was obvious that the highest professional honours were within his grasp. His advance had been checked by no difficulties, and, till then, seemed to be attended by no dangers. But the fourteenth of July dispelled his dream of safety. He saw the time

coming when the servants of the public might have to choose between death and crime. He doubted how he might stand the trial, and he felt certain that no reward was worth the risk. He resolved therefore, and he kept his resolution, to remain for life in a private station. His companions at the bar acted differently. Some perished for their virtues, some for their crimes, and some obtained and kept the most elevated civil dignities. But it was in vain that they pressed him to accompany them in their rise. He preserved his conscience, and perhaps his life, by the sacrifice of his ambition.

He soon found, however, that the humbler path of an advocate had its difficulties and its dangers. The order to which he belonged was abolished; in its room were substituted *défenseurs officieux* — a function which everyone, whatever were his previous employments or his previous ignorance, was allowed to exercise. The great objects of his veneration, the Parliaments, which, with a strange misconception of history, he describes as the supporters of pure monarchy, shared the fate of the bar. New tribunals were erected in their room, with inferior powers and a more limited jurisdiction. The greater part of the old bar refused to plead before them: and the character of the new judges, generally selected from among fierce political partizans, accounts for their refusal. As an illustration of their judicial conduct, M. Berryer relates the history of a cause tried before the *Tribunal des Minimes*, one of the new metropolitan courts, over which M. Le Roy Sermaise, a violent democrat, presided. The parties were two vil-

lagers from Montreuil, the matter in dispute a small estate. The plaintiff rested his claim on a deed of conveyance, which appeared on inspection to have nothing to do with the property; the defendant's case depended on uninterrupted possession. 'How long,' said M. Le Roy Sermaise, 'has this possession lasted?' 'Why, citizen president,' replied the peasant, 'it must be at least eighty or ninety years, taking in my great-grandfather, my grandfather, my father, and myself.' 'Then,' replied the judge, 'you ought to be satisfied; everyone in his turn — yours has lasted long enough in all conscience — now let your poor neighbour have his.' *

It must be added that the new *défenseurs officieux*, untrained in the conventional hostility of the bar, sometimes resented opposition as a personal injury; and no one could tell, in such times, what might be the consequence of making an enemy of the most insignificant or of the most worthless individual. On one occasion, M. Berryer had the misfortune of being opposed to Coffinhal, afterwards the sanguinary vice-president of the revolutionary tribunal. M. Berryer's clients were M. and Mde. Deville, rich and defenceless, for he had been a fermier-général and she a foundling. M. and Mde. de Challut, persons of large property and childless, had taken her while an infant from the foundling hospital, educated her, married her to M. Deville, and left to her the whole of their joint fortune. A distant relation employed Coffinhal to attack the will, as obtained by undue

* Vol. i. p. 133.

influence. Berryer proved that Mde. Deville had always supplied the place of a daughter to her benefactors. Coffinhal's only answer was to declaim against fermiers-généraux as vampires gorged with riches extorted by fraud and violence. The tribunal maintained the will, and Coffinhal left the court pouring out imprecations and threats of vengeance against Deville and all his colleagues. 'As for the counsel,' he added, 'who has dared to plead in such a cause, je le tortillerai.' Berryer tells us that he shuddered whenever the threat returned to his memory—and with great reason, for Coffinhal might have said with Cæsar, that it was much less trouble to him to destroy than to menace.

But these were preludes. Monarchical government was destroyed by the insurrection of August the 10th, 1792, republican government by that of June the 2nd, 1793. The strange sort of rule arose, which, for want of a more definite word, has been called the 'Reign of Terror'—a mixture of anarchy and despotism, of democracy, oligarchy, and tyranny, which combined all the worst faults of all the worst institutions. Two powers strove for mastery in this chaos, the Convention, and the Commune or Municipal Council of Paris, and each of these was subdivided into hostile factions. In all of them the objects of the leaders were power and safety; and in all of them the object of the subordinate members was safety. All joined in the endeavour to effect their purposes by the means resorted to in what has been called the state of nature;—by the destruction or intimidation of those whose power or whose safety they

thought inconsistent with their own. The ordinary instruments employed by each party were the *loi des suspects*, the revolutionary committees, and the revolutionary tribunal. The extraordinary instrument was the armed population of Paris, consisting of the National Guards, furnished by the forty-eight sections into which Paris was divided — a force generally called in the histories of the times by the somewhat puzzling name of 'the Sections.' The whole body, if it could have been collected, amounted to above 80,000 men, some provided with guns, but many more with only pikes; their principal arms consisted of some pieces of artillery attached to each section.

The forty-eight revolutionary committees of Paris were appointed by the inhabitants of the forty-eight sections, voting by universal suffrage. Their duty, for which they received a regular pay, was to enquire into all conduct which might affect the public safety, to give certificates of *civisme*—that is to say, of attachment to the revolution—and to order the arrest of all suspected persons.

The *loi des suspects* declared guilty of being suspected, and therefore subject to arrest, four principal classes :—1. All those who by their connections, their conversation, their writings, or their conduct, appeared to be opposed to liberty. 2. All those who could not prove their means of living, and of performing their civil duties. 3. All those who had been refused certificates of *civisme*. 4. All persons of noble birth, and all relations of emigrants, unless they could prove their ardent devotion to the Revolution.

The revolutionary tribunal was a criminal court of

equity; a court for the punishment of those who were unpunishable by law. It is a strong proof of the little progress which France has made towards real liberty, that M. Berryer approves of the principle of such an institution, and recommends its adoption as a restraint on the press.*

It consisted of a public accuser, judges and jurymen, all nominated by the Convention, restrained by no form of procedure or rules of evidence, and authorised on an application from the Convention, or from one of its two committees of *sûreté générale* and *salut public*, to judge all conspirators and opposers of the Revolution; and all those whose conduct or whose expression of opinion had a tendency to mislead the people. At first evidence was required, and the accused were allowed defenders; but as the trials increased in number, these forms were found inconvenient; and, after all, they were mere forms, for the business of the tribunal was not to try, but to condemn. They were therefore abolished, and the tribunal was required to decide without hearing any witnesses, if there were grounds, material or moral (such were the words of the decree), for believing the accused to be an enemy to the people.

Lists were kept ready of persons accused, others of persons condemned, with the names left in blank. Every evening the list of the accused was prepared by Fouquier-Tinville, the public accuser, settled by the *comité de salut public* of the Convention, and sent round to the prisons; those named in it were taken to the Conciergerie; the

* Vol. ii. p. 416.

next morning they were before their judges, and before the evening they had suffered. That there were grounds, material or moral, for conviction, was always assumed; no witnesses were examined; and the trial, if it could be called one, was generally merely the identifying the prisoner with one of the names on the list of persons accused. Even this might be dispensed with. When, as it sometimes happened, prisoners were brought to the bar whose names, in the hurry of business, had been left out of the list, the only result was that the public accuser immediately supplied the omission; and thus, in three minutes, a man might be indicted, tried, convicted, and sentenced, and an hour after executed.

As the Convention possessed the power of appointing and removing the members of the revolutionary tribunal, and of selecting its victims, it was, while its orders were obeyed, despotic in Paris; and when two committees of the Convention, that of *salut public* and *sûreté générale*, could send before the tribunal — that is to say, could send to death — any members of the Convention, the two committees became despotic in the Convention.

The inflicting death seems, like many other acts which are at first painful, to become a passion. No other explanation can be given of the condemnation by the revolutionary tribunal of many of the humblest and obscurest persons among the petty shopkeepers, and even workmen, of Paris. No other explanation can be given of some of the capricious murders related by M. Berryer. We give one or two examples: — In 1787, money had been

borrowed in Paris on printed debentures for 100*l.* each, signed by the Prince of Wales, the Duke of York, and the Duke of Clarence. They went by the name of *actions du Prince de Galles.* The transaction was an unfortunate one; the debentures were refused payment, lost their value, and disappeared. Six years afterwards, all persons concerned in their introduction into the Parisian market, or in their circulation, were accused as *contre-révolutionnaires,* and enemies of the people. The Duc de St. Aignan, a former client of M. Berryer, on whom a money-lender had forced some of these debentures, and who had obliged him by law to take them back, was among the accused. So was his duchess, a young woman of fashion, whom no one could suppose to have been acquainted with her husband's transactions. So were even the notaries in whose hands they were deposited, and their clerks; and even M. Chaudot, who had merely given a notarial attestation which he could not legally refuse. All were condemned, and all were executed.

Another notary, M. Martin — a friend, like M. Chaudot, of M. Berryer — met at his door, on his return from a morning's walk, a gendarme, who required his immediate attendance before the revolutionary tribunal. He found there three persons accused of having signed a pedigree certificate, which had been deposited in his office. There was nothing objectionable in the certificate, but it was said that some ill use might be made of it. The public accuser simply asked him if the paper had been placed with him; and on his admitting it, required the tribunal to convict and sentence him to death, together with those

previously accused. The tribunal instantly complied; the four prisoners were removed from the bar; room was found for them in the carriages which were setting off for the guillotine; and within three hours M. Martin was an unaccused man, and an executed criminal.

In the grand old castle of Canisy, near St. Lo in Normandy, is the portrait of a Madlle. de Faudoas, the daughter of a M. de Faudoas, who in 1793 was the proprietor of the castle and of the large estate dependent on it. It is that of a very pretty girl of eighteen, with a bright gay expression. The Faudoas were popular in their neighbourhood, and took no part in politics. In a letter to a young friend, Madlle. de Faudoas said — 'Ma chienne vient de mettre au monde quatre petits citoyens.' The letter was opened at the Paris post-office. She and her father were accused of being suspected of incivicism, arrested in their castle, carried to Paris, and guillotined.

'My great grandmother, my grandmother, and my great aunt,' said a lady whom we met at a neighbouring chateau, 'were guillotined on the same day. My great grandmother was ninety years old. When interrogated, she begged them to speak louder, as she was deaf. 'Ecrivez,' said Fouquier-Tinville,* 'que la citoyenne Noailles a conspiré sourdement contre la République.' They were drawn to the Place de la République in the same tombereau, and sat, waiting their turn, on the same bench. My great aunt was young and beautiful. The executioner, while fastening her to the plank, had a rose in his mouth.

* This speech has been given to Coffinhal, but it was really uttered, and on this occasion, by Fouquier-Tinville.

The Abbé de Noailles, who was below the scaffold disguised, to give them, at the risk of his life, a sign of benediction, was asked how they looked. "Comme si," he said, "elles allaient à la messe."'

During the 'Reign of Terror' M. Berryer gave up the public exercise of his profession. No one could act as *défenseur officieux* without a certificate of *civisme* from the revolutionary committee of his section. But he could not rely upon obtaining one from the uneducated and violent persons — a brothel-keeper, a knife-grinder, a porter, and a shoe-cleaner — who were paid forty sous a day to administer the affairs of the section. A person to whom such a certificate had been refused, became, as we have seen, by express enactment suspected, and certain, from the notoriety of the fact, to be arrested the next day; and equally certain to be executed, as soon as the malice of an enemy, or the caprice of the public accuser, should call him forth. He at first proposed to shut himself up in his study, and to act solely as a chamber-counsel; but he was soon told that seclusion would inevitably attract suspicion, and that he must find some mode of life which would not bear the interpretation of fear. Fortunately he had been counsel, in happier times, for the National Treasury, and M. Turpin, the agent (a functionary corresponding, we believe, to our secretary), was his intimate friend. M. Turpin, indeed, was not safe; for, though intrusted with matters of the utmost confidence, and daily transacting business with the heads of the department, he was the object of such jealousy, that a gendarme

watched all his proceedings, and, in fact, never quitted him by day or night. Notwithstanding the want of a certificate of *civisme*, the previous services and the reputation of M. Berryer, and the friendship of M. Turpin, effected his admission into the offices of the Treasury as sub-agent — a favour great, not only from its importance to the person admitted, but from the danger to which it exposed those who admitted him.

In this new post, his days were passed in the office, and his evenings in transacting the legal business of his former clients; and again he fancied himself safe. Some vexations, indeed, he was exposed to, but they were almost ludicrous annoyances. He and his wife were forced to bring their table into the street, and to consume, in the presence of the passers-by, 'le dîner patriotique.' His wife was sometimes forced to attend at the baker's to inspect the sale of bread, to see that no one was served before his turn, and that no one was allowed to purchase beyond his strict wants. At other times she had to head a deputation from the women of the section to the Convention, deliver a patriotic speech, and receive the fraternal embrace of the president.

Suddenly, however, he was roused to a sense of imminent danger by an accidental visit to the Treasury offices of a M. L——, one of his former brethren of the bar, now become a member of the Convention. The visitor loudly expressed his astonishment that an aristocrat, and a counter-revolutionist, in whose house conspirators met every evening, should fill a government employment. Such

remarks were deadly. They were sure to be whispered about, and to be acted upon by some wretch anxious to pay court to the deputy. It was probable that, in twenty-four hours, M. Berryer would be in one of the dungeons of the Abbaye, and in a week afterwards in the Place de la Revolution; and there was no knowing how many of those who had favoured his employment might accompany him. Fortunately he had two friends in the Convention, Charles Lacroix and Bourdon de l'Oise, both stanch members of the *Montagne*. He ran to the chamber, and found Bourdon de l'Oise entering it, clattering, as he went, the huge sabre which he had carried in the storm of the Bastile. What were the persuasions applied by his two friends to their colleague, M. Berryer does not tell us, but they were sufficient. M. L—— returned to the Treasury, praised loudly the patriotism of M. Berryer, informed the hearers that the nightly visitors were inoffensive clients, and ended by stating that his remarks had been quite misunderstood, and in fact were meant for a different person.

But the danger had been averted, only to reappear in a form less direct, but more painful. Among M. Berryer's most honoured clients were the great bankers of the Place Vendôme, MM. Magon de la Balue and Magon de la Blinais, MM. Laurent Le Couteulx and Le Couteulx Cautelen, and M. Pourrat. One Heron, a merchant of Marseilles, had become bankrupt, had fled to South America, and returned in the beginning of the Revolution with some bills of the Spanish government of considerable nominal

value. He offered them to the principal banking-houses, but could not get them discounted. This rankled in his mind, and as soon as the *loi des suspects* gave arms to malignity, he denounced all those who had refused him. MM. Laurent Le Couteulx and Le Couteulx Cautelen were detained for eleven months in the Conciergerie; saw it weekly emptied and weekly filled, but escaped at an enormous expense, by bribing the clerks to place the papers relating to them always at the bottom of the bundles of accusations. M. Pourrat fell early a victim to his own precautions. He became a member of the Jacobin club. The singularity of a banker in such a society attracted attention, and he was arrested on the benches of the club. MM. Magon de la Balue and Magon de la Blinais, both venerable men between eighty and ninety, were confined in the *Maison de santé de Belhomme*; a place celebrated for having exhibited the last traces of the ancient aristocratic habits.

There those who could afford the expense of such a prison spent the last weeks of their lives among the enjoyments and the forms to which they had been accustomed. The *roturiers* and the nobles, and among the nobles, those of the sword and those of the robe, kept their distinct circles. There were ceremonious visits, and full-dress evening parties, where the younger portion of this short-lived society amused themselves by rehearsing the trial and the execution.

Herault de Sechelles was then the President of the Convention. He was a man of birth and education,

nephew of the Maréchal de Contades, and of his sister, Madame Magon de la Balue. To him, in this extremity, M. Berryer had recourse. A word from him would have saved the prisoners. But in revolutionary times there is little sympathy, and still less courage. Herault de Sechelles was cold and embarrassed—dwelt on the delicacy of his own position—and all that could be got from him were a few lines introducing Berryer to Dubarran, a member of the committee of *sûreté générale*. He had to wait long in Dubarran's ante-chamber, among suppliants who, like himself, looked forward with dread to their audience. When he announced himself as M. Magon de la Balue's counsel, Dubarran exclaimed, with a mixture of fierceness and contempt, 'So you are one of those who defend the enemies of the Republic, the aristocrats, and the conspirators! You had better leave them and us alone.'

Early the next morning, a gentlemanlike man called on Berryer.

'You,' he said, 'are counsel for the Magons. It is in your power to take them from their prison, and send them in safety across the frontier. Magon de la Balue has, sewed into his dressing gown, assignats worth 1,500,000 francs. I ask for only 300,000 out of them. In return he shall have these passports;' and he showed three blank passports, signed by Robespierre, Couthon, Carnot, and Barrére.

'I show them to you,' he added, 'that you may report to the Magons that I have them. As respects all other persons,

forget them, as you value your life. On mentioning your name, you will have free access to the Magons. I shall be here, at this time to-morrow, to hear the result.'

The emissary's promise was performed. The doors of M. Magon's prison opened at Berryer's name. He found Magon de la Balue wrapped in his dressing gown. He started when he was told that its linings contained 150 assignats of 10,000 francs each. 'Who would have thought,' he exclaimed, 'that the person in whom I most confide would have betrayed me!' But he believed the offer of the passports to be sincere, and sent for his brother, to consult as to its acceptance. The only answer of M. de la Blinais was, that he and his brother were perfectly innocent, that to fly from their trial would be an admission of guilt, and that, in fact, their conviction was impossible. In spite of Berryer's arguments, M. de la Balue agreed with his brother.

The next day the emissary returned. 'My clients,' said Berryer, 'feel that they are irreproachable, and can have nothing to fear from justice.'

'That means,' he answered, 'that they refuse my offer. They will soon reap the consequences of their folly. As for yourself, be silent. If you ever allude to the possibility of passports from the committee of *salut public* being obtainable, you will follow your foolish clients.'

A week after, M. Berryer read in the papers the conviction of the conspirators, Magon de la Blinais, Magon de la Balue, the woman St. Perne, daughter, the woman Cornulier, grand-daughter of the latter, and the

man Cornulier, his son-in-law, and the man Coureur, his secretary. Mixed with his regrets were his fears. He was known to have been their counsel. The fierce Dubarran had already threatened him with the consequences of defending aristocrats and conspirators, and he knew that among their papers must be found whole bundles of his letters. He does not appear to be even now able to explain his escape, unless by imputing it to gratitude in Fouquier-Tinville for an early service; a solution, perhaps, as improbable as the imputation of any monstrous wickedness to a man of ordinary virtue.

As confiscation was the necessary consequence of condemnation, indeed one of its principal motives, the three infant children of Cornulier were thrust into the street, and kept alive only, through the fidelity of their nurse, by the sale of her little property and by her daily labour.

M. Berryer soon suffered a still severer loss. In 1792, his uncle, M. Varroquier, one of the most respected inhabitants of Sedan, was a member of its municipality. His colleagues were twenty-three men of large fortune, the great manufacturers of the town. Its fine cloths had then, as indeed they have now, an European reputation. The insurrection of August the 10th, 1792, had dethroned the king, and rendered the mob the temporary rulers of Paris. The legislative assembly had summoned the Convention, but in the interval before that body had met the assembly represented the government. The two armies commanded by La Fayette and Luckner were supposed to remain faithful to the old constitution, and the assembly sent commissioners taken

from its own body to supersede them. La Fayette's head-quarters were at Sedan. He refused obedience to the commissioners, and, with the acquiescence of the municipality, sent them to the citadel of Sedan. The next day (according to Berryer the 15th of August, but as we believe the 19th) La Fayette, finding that he could not rely on his troops, fled from Sedan, in the hope of finding a refuge in America. The municipality of Sedan instantly released the commissioners and acknowledged their authority. 'Our first business,' said the commissioners in their report to the assembly, 'was to set at ease those who had concurred in our arrest. It was a fault, but one which we have forgotten, and which we trust that you will forget.'

And apparently it was forgotten. All the autumn of 1792, all the year 1793, and the first four months of 1794, passed without the incident being even alluded to. But on the 13th *Floréal*, An 2 (May 2, 1794), Berryer received a letter from his uncle to say that he and his twenty-three colleagues in the municipality had been arrested by order of the committee of *salut public*, and were on their way to Paris to be tried by the revolutionary tribunal. The only pretext could be their acquiescence, a year and a half before, in the arrest of the commissioners of the legislative assembly. The want of a certificate of *civicism* rendered him unable to defend them in person; but he engaged for them Fleuret, the most eminent of the advocates who ventured to plead before that terrible tribunal, and he persuaded La Croix, a member of the *Montagne*, to intercede with the two committees. The real crime of the prisoners

was their wealth. It must have amounted to many millions of francs—a larger booty than had been obtained by any single confiscation. La Croix was, therefore, told that the course of justice could not be interrupted; that if the accused were innocent, they had nothing to fear from an equitable and merciful tribunal. As a matter of course, they were all convicted of incivicism and executed.

These horrors, however, were at length to terminate. The party of which Robespierre and his immediate friends formed the nucleus, had risen to power by a process of constant contraction. Originally, it comprised nearly the whole of the deputies of the *Tiers Etat*, for who was there that refused the oath of the Tennis Court? First it threw off and destroyed the aristocratic Royalists, then the Girondins, then the Hébertists, and at last even the Dantonists. At every change, while it destroyed a rival, it deprived itself of a supporter. At first it spoke the voice of a nation, afterwards that of an assembly; then that of a party, and at length that of a committee. But the committees of *salut public* and *sûreté générale* were omnipotent. Fielding has remarked, that a man with a pistol may hold at bay a multitude; for though he can shoot but one man, everyone feels that the first who attacks him will be that one.

Nothing in the history of the Revolution is more striking than Thibaudeau's picture of the submission of the fierce and violent Convention before the governing Committee of Public Safety:—'The object of every member, from the instant that he entered the house, was to prevent his

behaviour there from being a crime. Every movement, every look, every murmur, every smile, was calculated. Those who ventured to have a place crowded to the *Montagne* (the high benches of the left), as the republican seats, or took refuge in the centre (answering to our benches below the gangway), as the seats which manifested no party feeling. Others wandered from bench to bench, in the hope that they might be supposed to be opposed to no party, and to no opinion; but the more prudent never ventured to sit. They stood in groups at the bar, and slunk away whenever a vote was probable. The sittings, once so long and so violent, were cold and short. Trifling details were discussed until the Committee of Public Safety appeared. The Committee, headed by their *rapporteur* (the member charged to announce their decisions), entered with the air of masters. In their progress to the tribune they were preceded and followed by those who were striving to propitiate them by apparent devotion. There was deep silence until the *rapporteur* spoke: everyone sought to read in his countenance whether he was to announce a victory or a proscription. His proposals, whatever they were, were servilely adopted, generally in silence; but if a word were spoken, it was merely an echo.'*

Such was the state of things when, on the 24th *Prairial* An 2 (June 12, 1794), Bourdon de l'Oise requested a visit from M. Berryer. He went, little expecting the frightful

* Mémoires sur la Convention et le Directoire. Paris, 1827. Vol. i. p. 47.

confidence that was to be reposed in him. 'Robespierre,' said Bourdon, 'has become my enemy. He intends to murder me by the guillotine. I have resolved to be beforehand, and to destroy him with my own hand.' As proofs of his courage and resolution, he displayed the dress which he had worn at the storm of the Bastille, still covered with the blood of its defenders; the plumes which had ornamented his cap in the Vendéan war, torn by balls in every feather; and the huge sword with which he had pierced many an enemy, and which was now to be plunged into the heart of Robespierre. Berryer listened in terror; but still more dangerous matter was to come. Bourdon added, that he had selected him as depositary, not only of his secrets, but of his last wishes and of his fortune, and placed in his hands a parcel containing his will, his title-deeds, and instructions to be followed in the very probable event of Bourdon's fall before he had an opportunity to execute his attempt, or in consequence of the attempt.

For forty-five* anxious days, and almost sleepless nights, M. Berryer retained this terrible deposit. He was now for the first time an actual conspirator. His connection with the chief conspirator was notorious. His safety seemed to depend on Bourdon's immediate success in destroying, by his own hand, both Robespierre and the

* M. Berryer says sixteen days; but the time between the 24th *Prairial* and the 9th *Thermidor*, that is, from the 12th of June to the 27th of July, was forty-five days. Perhaps the error may lie in the date of the conversation.

oligarchy of which he was the president. Assassination is a desperate resource. The attempt itself rarely succeeds, and where it does succeed rarely produces the intended result.

Happily for M. Berryer, events took a different turn. We have said that the committees were omnipotent; but their power depended, more obviously and immediately than that of governments in general, on opinion. They had not, like the tyrannies that succeeded them, an armed force trained to unreflecting obedience. While the Convention bent before them, they seemed to be irresistible; but the Convention was obedient, not from affection or confidence—for the committees were objects of distrust and hatred — but because they were supposed to have the support of the National Guards. How far that supposition was true, was a doubt not to be solved without extreme peril; for the fact could be ascertained only by resistance, and if they really had that support, those who resisted must perish.

Dissensions among themselves forced the decision of this tremendous question. Robespierre threw all his colleagues in the committees into shade. He formed, with his devoted adherents St. Just and Couthon, what began to be called the triumvirate—a sort of committee of the committees, which controlled all their operations. It was rather, however, a dictatorship than a triumvirate; for St. Just from fanaticism, and Couthon from servility, were mere instruments.

Robespierre did not owe his predominance to his talents;

for his talents, though it is absurd to deny him great talents both as a writer and as a speaker, were inferior to those of several of his rivals, and even of his dependents; nor to his courage, for there he was positively deficient. But he had insatiable ambition, and insatiable vanity, and no passion that interfered with them. He had no love of money, of ostentation, of pleasure, or of ease. He had no friendship, no pity, no truth, no shame, no remorse: he appeared, therefore, to have an inflexible will. The weakest part of his character was the combination of ambition with vanity; but during the earlier part of his career these passions acted well together. His desire of immediate applause led him to flatter the self-love of the Parisian mob, by an adulation of which no man with self-respect could have been guilty; to encourage all their most mischievous prejudices, and to stimulate all their worst passions. In any ordinary state of society such conduct would have been fatal to his prospects as a statesman; but in a revolution, it gave him unbounded popularity, and popularity was power. On the other hand, his love of power impelled him to destroy those whose influence interfered with his own, and thus pleased at the same time his vanity by leaving him the only prominent figure.

But the time was come when the gratification of both these passions at once became impossible. He might, perhaps, have retained predominant power if he had been satisfied with the reality, and allowed his colleagues to appear to the world as his equals; but this was repugnant to his

vanity. He might have remained the general object of admiration if he had allowed them to be really his associates in power; but this interfered with his ambition. He wished to absorb all power and all reputation; to be the dictator of a republic to which his will was to be the law; and to be the high priest of a religion which his recognition had established.

To do this it was necessary to destroy his present associates; and, as their removal would have revived the more moderate revolutionary party, of which Danton had been the head, it was also necessary to destroy the remnant of the Dantonists. These objects could be effected, however, only by the aid either of the Convention, or of the Commune of Paris and the National Guards. If he could obtain from the Convention a decree for the arrest and accusation of the other members of the two committees, he would have succeeded: the remainder of the Convention, deprived of all its influential members, would have been at his feet. The Commune was already devoted to him, so was Henriot, the commander of the National Guards; and he relied on the obedience of these citizen troops to orders in which all the authorities should concur.

But if the Convention took part with the committees, he still hoped, with the aid of the Commune and of Henriot, to dispose of the National Guards, and to put an end, by terror or by force, to all resistance. It may appear that it would have been simpler to begin by force; but, in the first place, he expected submission from the Convention; and, in the second place, until the Convention had refused his

demands, there was no pretext for rising against it, and some pretext was required even in those times, and even for an insurrection.

At the meeting of the Convention on the 8th *Thermidor*, An 2 (July the 26th, 1794), Robespierre commenced his attack. After a long description of the general mal-administration of the country, he inferred 'that there was a conspiracy to destroy the republic and the patriots; that members of the two committees were among the conspirators; and that it had become necessary to punish the traitors, to crush all factions under the weight of the national authority, and to raise from the ruins the supremacy of justice and freedom.'

This speech was received, as no speech of Robespierre's had ever before been received in that assembly, with dead silence. The usual motion, however, for its being printed and distributed was made and carried, and the Convention seemed to remain in obedience. But the extremity of the peril now gave courage to the members of the two committees. Those who spoke first ventured only to defend themselves; those who followed dared to recriminate. Robespierre, unaccustomed to opposition, began to explain and retract: the Dantonists joined his opponents, and the sitting terminated by rescinding the resolution for printing his speech.

The first attack, therefore, had been repulsed. The evening and the night were spent by each party in preparation. It was resolved on the part of Robespierre that the Convention should meet the next morning; that

in the Convention a definite motion, denouncing the crimes and requiring the arrest of those whom it was intended to sacrifice, should be made by St. Just, and enforced by Robespierre; and that if the Convention refused, the Commune should declare that the people had resumed the direct exercise of its sovereignty, should assemble the National Guards, and march to deliver the Convention from the criminals who were misleading it.

In the meantime the members of the committees and the Dantonists, united into one party by their common danger, were employed in endeavouring to obtain the co-operation of the other parties in the Convention. Such was the detestation which they themselves had inspired, and such the fear of Robespierre, that it was only after many repulses that they began to make any progress. Succeed, however, they did, and the next day, the celebrated 9th *Thermidor*, when Robespierre entered the assembly, he probably had not ten adherents left in a body of which (two days before) he had been the dictator.

We need not do more than refer to the scene of the 9th *Thermidor* — a scene probably unequalled in any deliberative assembly: when St. Just was interrupted after his first sentence, and Robespierre had to listen hour after hour to the long-compressed hatred of his revolted subjects — his cries and screams for the right of reply drowned by the imprecations of his accusers and the bell of the president; until at length, as he lay on the bench gasping with fatigue, rage, and terror, he was ordered into arrest, together with his adherents, St. Just, Couthon,

Le Bas, and Robespierre the younger, and seized by the attendants of the house.

It was now five o'clock, and the house adjourned to seven, exhausted by the struggle, and scarcely venturing to believe the result. The Commune in the meantime had assembled, but had not acted. It had adjourned before the arrest of Robespierre was known. Indeed, considering the strangeness and the magnitude of that event, the news appears to have circulated very slowly. Thibaudeau tells us that, when the Convention met in the evening, the greater part of the members heard for the first time the events of the morning. It is probable that the morning attendance had been comparatively thin, and consisted chiefly of those who the night before had concerted their proceedings.

The Commune had adjourned only till six. When they reassembled, and heard of the arrest of Robespierre and of his companions, they declared that the people, and the Commune, as the organ of the people, had resumed its sovereignty; ordered the tocsin to ring in every section; despatched messengers on all sides to call out the National Guards; and, in short, set in motion the insurrectional machinery which had never failed during the previous course of the Revolution. They soon collected a force sufficient to rescue the prisoners from their confinement in one of the committee rooms, and to carry them in triumph to the head-quarters of the Commune, the Hôtel de Ville.

By this time it was nearly eight. The Convention re-

assembled, but it was only to communicate their alarms. 'A few,' says Thibaudeau, 'had gained courage by their success in the morning; others awaited the result in silence; the greater part were unable to comprehend what was going on. As it became dark the horror of our situation increased. We heard the noise of the drums and of the tocsin. A few members formed themselves into a committee to consider the course to be adopted, the others listened in the utmost anxiety to the reports brought back by those who had ventured to ascertain the state of things without. At length, about midnight, the crisis appeared to approach. Collot d'Herbois, the President, said in his sepulchral voice, "Representatives, the time is come for us to die at our posts; I am informed that Henriot's forces surround us." Instantly all the spectators fled from the galleries, the members who had been standing together in groups took their usual seats, and prepared to die with decency. As for myself, I had not the slightest doubt that our last moment was come.' *

It was true that Henriot had led his men to the attack. His cannon even were pointed at their doors. But when he gave the word to fire, his artillerymen hesitated, and at last refused. Henriot, finding that his troops could not be depended on, thought it prudent to march them back to the Hôtel de Ville.

It was thus that, on the caprice or the irresolution of half a dozen men, the fate of the Convention, and perhaps

* Mémoires, vol. i. p. 83.

the future history of France, and even of Europe, depended. For if the cannon had fired, and Henriot's forces, many of them the same men who three years before had stormed the Tuileries and destroyed the defenders, had rushed into the hall where the members were sitting, merely awaiting their fate without any plan of resistance, it seems probable that the greater part of the assembly would have been massacred on their seats; and certain that all who escaped would have been treated as they themselves treated their adversaries a few hours afterwards—would have been condemned and executed without trial. Robespierre would have been absolute master of Paris. Whether he would or would not have been able to summon another representative assembly, or, without one, to retain the provinces and the armies in subjection to Paris, is more questionable. But, on any supposition, the whole subsequent course of events would have been different: there would have been different scenes and different actors. Pichegru might have imitated Monk, and royalty have been restored by a native army in 1794, instead of by a foreign one in 1814; or Nantes, and Lyons, and Bordeaux, and Toulon, and La Vendée, might have successfully risen against Paris, and France have split into hostile communities. Reform would have been delayed in Germany, and accelerated in Great Britain and Ireland. The half-minute during which it was undecided whether the artillery would fire or not, is the most important half-minute in history.

The retreat of Henriot seems to have given to the

Convention the courage necessary to active resistance. They declared Henriot, Robespierre, and his associates, and the whole Commune of Paris, *hors de la loi*; invested Barras with the command of the National Guards, and appointed members to act under him; despatched others to the head-quarters of the different sections, to announce these decrees, and summon the National Guards, and resolved as soon as a sufficient body could be collected to march and attack the Commune at the Hôtel de Ville. The events of this night have been told in so many different ways, that some future Strauss may treat the whole as a legend. The following is M. Berryer's narrative:—

'The *corps de garde* of my section, La Réunion, was at the Hôtel d'Asniéres, and I determined not to return home during the night. There was great indecision among us until the exhortations of the messengers from the Convention, marked by their dress, and raised, from their being on horseback, above the audience, decided the wavering to side with the Convention. We resolved to march immediately to the defence of the Assembly. I was armed as usual with my pike, which was the common weapon; a very few had muskets. When we reached the Place of the Carrousel, which at that time joined the Tuileries, receiving no orders, we sat down on the pavement. Between midnight and one in the morning we were ordered to form column and march on the Hôtel de Ville, then occupied by Robespierre and his associates. On our left was the section Marat, consisting, like ourselves, of

about 200 men, about as well armed as we were. Three guns with lighted matches preceded us. By the time we had reached the Oratoire in the Rue St. Honoré, our artillery, very ill commanded, was in the centre of the column. I now discovered by the cries of Bourdon de l'Oise, as he was rectifying this blunder, that we were under his command. When we reached the open space before the Hôtel de Ville, we found there many pieces of cannon, and the troops of several other sections, apparently directed like ourselves against the Commune.* Our officers had ranged us in front of the Hôtel de Ville, with our cannon behind, so that we should have been the first objects of a discharge. While Bourdon de l'Oise was setting this right, he noticed me, and congratulated me on my courage.

'Suddenly a sort of commotion was heard in the great hall of the Hôtel de Ville; and immediately afterwards I saw Bourdon de l'Oise, with some determined followers, rush up the large open staircase. He held a pistol in each hand, a drawn sabre between his teeth, and with his fiery eyes and burning cheeks, looked more like a fury than a human being. In a minute or two we heard shots in the interior. Robespierre the younger jumped out of one window, Henriot was thrown out of another, Robespierre

* On comparing M. Berryer's statements with those of other witnesses, we are inclined to believe that the greater part of these troops consisted of the National Guards, who had originally obeyed the summons of the Commune; and whom the retreat of Henriot, the decree which outlawed the Commune, and the arguments of the members who had been sent out, had subsequently induced to support the Convention.

was wounded, and Le Bas killed in the struggle. Couthon, pretending to be dead, was laid at full length on the coping of the Quai Pelletier, until a prick from a bayonet made him wince, and he was removed in custody; Robespierre was carried by me on a litter, to endure the utmost bitterness of death.

'The next morning I found it so difficult to believe my recollections of the night, that, notwithstanding my horror of executions, I went to the Terrace of the Tuileries, which overlooks the Place de la Revolution, to watch the carts filled with the conquered party enter the enclosure of the guillotine. The long-continued shouts and applause which soon followed left me no doubt that the head of Robespierre had really fallen.

'The next day, however, perished some whom I could not but pity. These were the seventy-two members of the Commune of Paris, who had been all seized in their hall of assembly, kept in custody for thirty-six hours, and then, without any trial beyond a mere identification, thrown into seven or eight carts, carried to the Place de la Revolution, and executed. The greater part of them had committed no error except that of taking office in such times as these. The punishment *en masse* of a whole body, though it may comprehend a minority who have protested against the acts of the majority, is the *ne plus ultra* of political iniquity. As I saw them pass by to their dreadful fate, I congratulated myself again and again on my resolution to refuse public employment.

'Heron, the murderer of the Magons, was arrested

under a resolution of the Convention, and immediately executed. My formidable enemy Coffinhal, who had contrived to add to the ferocity even of judgements such as his, by the jests with which he embittered them, was destroyed by the ingratitude of a wretch like himself. He had escaped from the Hôtel de Ville in the confusion of the night of the 9th *Thermidor*, fled to the river side, and lay hid for two days at the bottom of a barge. At length he was forced by hunger from his retreat, and reached the house of a petty shopkeeper, who owed to him his marriage and his establishment in business. It was late, and he found the husband and wife in the back room. While the wife was providing him with food, the husband went forward under the pretence of closing his shop, but in fact to denounce his benefactor and call in the police. Coffinhal resisted, was tied and thrown into a cart, and carried to instant execution, shouting and screaming in impotent rage.'*

Experience had proved the mischiefs and the dangers, both to rulers and to subjects, of what has been called revolutionary government; that is to say, government by a single assembly representing the omnipotence of the people, and exercising or delegating to its own instruments all legislative and executive powers. The surviving leaders, therefore, in the Convention, a small minority of the remarkable men whom it once contained, employed themselves in preparing, for the third time, a constitution.

* Vol. i. pp. 231, 237.

The constitution of 1791 had failed, partly from its intrinsic defects, partly from the disinclination of the separate authorities to acknowledge the rights which the constitution gave to others, or the restraints which it imposed on themselves, and partly from the violent and unjust aggressions of foreign powers. That of 1793 had been prepared in a week, accepted by the people in three days, and immediately suspended. It scarcely differed, in fact, from the then existing revolutionary government, except by subjecting to annual re-election the single assembly which was to govern as a sort of committee of the nation.

The wisdom of the constitution of 1795 has been highly praised. We have been told that it would have endured, and endured beneficially, if any government not monarchical could have supported itself in France. It was prepared at leisure, and by men of talents, knowledge, and integrity; and as it was the result of six years' experience in revolution, it provided against the most obvious of the disorders under which the previous governments had fallen. It provided against the dangers of universal suffrage by establishing indirect election, and by requiring from the first body of electors, the members of what were called the primary assemblies, a qualification depending on taxation; and from the second body, the members of the electoral assemblies, a qualification depending on property. It guarded against rash legislation, by dividing the legislative body into two chambers; one intrusted with the preparation of laws, the other with

their acceptance or rejection. It created a separate executive, consisting of a Directory of five persons, appointed by the Chambers, and endeavoured to prevent the union of legislative and executive powers, by prohibiting any member of either chamber from filling any other office whatever. It guarded against permanence in office, by enacting that no one should be an elector of the higher order, that is to say, a member of an electoral assembly, for two successive years, or a member of the legislative body for more than six successive years, or a director for more than five years. One director and a third of the legislature were to retire annually, the former by lot, the latter according to seniority of election.

It is impossible to believe that under any circumstances such a constitution could have been permanent. Its fundamental principles were change and collision. Neither the electoral, the legislative, nor the executive body were to remain unaltered for more than one year. It made experience in public affairs a positive disqualification. A member of the legislature was not re-eligible till after two years' interval, nor a member of the Directory till after five. The members of the legislature, incapable of any other functions, were necessarily in opposition to the Directory. The five directors, with no head, and no common interest, whom accident had made colleagues, and accident was to separate, necessarily split into factions. All the principles of good government were sacrificed to republican jealousy of those to whom power was to be intrusted.

The fitness of this new government to withstand assaults from without cannot be said to have been tried. Before it had lasted two years it was destroyed from within; and with it was destroyed, for many years, all hope of constitutional, or even legal, government in France. From the unhappy morning of the 18th *Fructidor*, An. 5 (Sept. 4, 1797), when a portion of the Directory used a military force to overpower their colleagues and the two representative bodies of France, the army had become the masters of the state. Such a precedent once set was not to be recalled. For many subsequent years the drum was substituted for the tocsin, the voice of the general for that of the demagogue, and a military commission for a revolutionary tribunal. From that time the history of France loses its interest. From the history of a nation it becomes the history of an army; and soon afterwards the biography of the individual whose genius enabled him to seize that coarse but irresistible instrument. The picturesque and exciting acts of the vast drama were ended; the great actors, whose audacity of thought, language, and conduct had crowded into six years changes that seemed to require centuries, had perished, were exiled, or were silenced. The work of destruction ended with the Convention: that of reconstruction began with the Consulate. The Directory was an interval of fraud and force applied to personal purposes — combining the insecurity of a revolution without its enthusiasm, and the oppression of a tyranny without its vigour.

The establishment, however, of something resembling

regular government, restored M. Berryer to the public exercise of his profession. One of his first appearances was in defence of a member of the revolutionary committee who had been the petty despots of his section. Their acts of oppression were passed over as incidental to their office, but it was thought safe to attack their miserable peculations. Among these was the robbery of a chapel: the knife-grinder had appropriated the cloth, the president had turned the velvet of the high altar into a pair of breeches, the shoe-cleaner had taken the silk, the porter the silver fringes, and the fifth member the linen. The shoe-cleaner had been M. Berryer's patron, had obtained a passport for him at a critical time, and had given countenance and protection to some others of the inhabitants of the section, who had the merit of being the customers of his stall. These services were urged by M. Berryer, and accepted by the judges as an excuse for the sacrilege.

More serious questions soon arose. In a country in which the law had been powerless for nearly two years — in which property had been a ground for proscription, and every stratagem had been used to conceal it — in which the legal currency had been in a course of daily depreciation, while death was the punishment of those who ventured to refuse it, or even to take it at less than its nominal value — where even the connection and mutual rights of husband and wife, and parent and child, had been fluctuating — the relations of individuals towards one another, and towards the property which had escaped confiscation, required to be ascertained.

M. Berryer's narratives of his contests on questions depending on marriage, divorce, and legitimacy, are interesting. They describe a community unsupported by religion, delicacy, or morality — in which virtues had so often been declared to be criminal, and crimes to be virtuous, that public opinion had been destroyed, and with it the conscience and even the self-respect of individuals. Brothers and sisters bred up together attack one another's legitimacy, women set aside their own marriages, husbands disavow their wives, and parents their children; in short, all the misery is exhibited of a society in which mere law is the only restraint. But M. Berryer's stories of this kind are too concise, and too much alike in their features, to be interesting in such an abridgement as we could give of them. We shall select, therefore, some other incidents from his parti-coloured narrative.

One of the most remarkable, and one of those which throw most light upon the internal state of France, during the interval between the Reign of Terror and the Consulate, is a trial before the tribunal of Chartres, in which M. Berryer was only a spectator. For some years previous to the trial, which appears to have taken place in the year 1795, a large tract of country, of which the forest of Orgeres, extending to within thirty miles of Chartres, is the centre, had been infested by bands of ruffians, who, from their use of fire as an instrument of torture, acquired the name of *Chauffeurs*. They were accustomed to surround lonely farm-houses in numbers too large for resistance, bind the males, and force the females, by fire applied to

the feet, to discover the property of the family. From the number of their outrages, the uniformity of their proceedings, and the skill with which they were conducted, it was inferred that they formed a large confederacy, acting on system, and obeying some central authority. But this was mere suspicion: common as the crime was, not one of the criminals was identified.

One day, however, two gendarmes, as they crossed a portion of the forest, found a child about ten years old, the singularity of whose dress excited their curiosity. He asked for food, and was persuaded to accompany them to a neighbouring town. A good breakfast and a glass of wine obtained his confidence. He told them that he lived with his father and mother, and many other families, in a vast cavern in the forest. That a great many men came there from time to time, bringing with them sometimes plate and other valuables, which were afterwards taken away, and sometimes provisions and clothes for the inhabitants. It seemed probable that the head-quarter of the *Chauffeurs* was now detected; but, instead of attacking the cavern, the result of which would have been only the seizure of those who might be in it at the time, and the alarm and escape of the other members of the confederacy, it was resolved to use the child as a means of arresting the out-door brigands, one by one, and to reserve the cavern for the last.

For this purpose, the child, to whom we will give, by anticipation, the name of *Finfin*, which he afterwards acquired by the dexterity with which he played his part,

was disguised by good clothes, and placed, under the care of a woman who acted as his nurse, at the corners of the markets of the towns to which it was supposed that the brigands would resort to sell the plundered property. Whenever he saw a face with which he had become familiar in the cavern, he gave a sign, and the person indicated was arrested. At length the number exceeded a hundred; descriptions of the prisoners, and of the property found on them, were published; and evidence poured in from all sides. The trial lasted several days. Every morning the accused, about 112 in number, were marched in a long column, guarded by a numerous escort, through the streets of Chartres, to a church in the centre of the town, which had been fitted up on this occasion as a court, and was large enough to exhibit them all to the witnesses and the jury. M. Berryer dwells on the horrors of the evidence, particularly on that of the daughters of an opulent proprietor, three sisters, whose feet had been destroyed by fire, so that they were forced to come on crutches into the court.

It appeared that the cavern, or rather the collection of caverns, from whence *Finfin* had wandered, was situated in the least accessible portion of the forest, and formed out of the quarries which had furnished the stone for the magnificent cathedral of Chartres. Here a colony of malefactors, male and female, had been founded, which recruited itself, partly by immigration and partly by natural increase. Like the Indian associations of Thugs, it had a government, laws, and police, adapted to the frightful

profession of its members. It had corresponding members, who indicated the dwellings most fit for attack, and an executive, which planned expeditions, and appointed the persons who were to effect them. The whole 112 were convicted. At a subsequent period, it would have been difficult to dispose of a body of criminals for whom death was the only appropriate sentence, and who would have been thought too numerous for such a punishment; but in 1795, and in France, men were accustomed to such scenes, and M. Berryer passes over their execution without remark.

During the six years which elapsed between M. Berryer's return to his profession and the peace of Amiens, his principal employment, as honourable as it was ineffectual, was the defence of neutral owners against French privateers. At the breaking out of the war in 1793, a decree of the Convention had given jurisdiction in all cases of capture to the local tribunals of France, and even to the French consuls in foreign parts.

'It became,' says M. Berryer, 'a presumption of law in those local prize courts, that not a vessel that traversed the ocean was really neutral; that every cargo was in fact English property; and that all the exteriors of neutrality were frauds to be exposed or eluded. The most frivolous objections were raised to the different papers by which the nationality of the ship, or the ownership of the cargo, was proved, and always with success. Every syllable in every passport was challenged, and every change that, during a long voyage, had taken place in the crew. But when the law of 1798 had declared good prize

every vessel containing goods (*marchandises*) the produce of England, or of any English dependency, the robberies of the privateers were unrestrained. They seized, absolutely, without exception, every vessel which they met with at sea, whatever the flag, for they were sure to find on board some English goods. It might have been supposed that the word goods (*marchandises*) meant something intended for sale, or at least something for which freight was to be paid. It was held to comprehend the mere furniture of a cabin, a bed, a chair, or a carpet, or even a knife or a razor used by the captain. The presence of any such article drew after it the confiscation of ship and cargo, valued perhaps at millions.

'Hundreds of appeals were put into my hands, not from the hope of redress, but because the policies which insured against capture required that every means to ward off condemnation should have been exhausted. The neutral captains and supercargoes crowded to my office — men who had been intrusted with millions; and now, deprived of their own little funds, and even of their baggage, had to depend on the consuls of their countries for the means of existence during the suit.

'In one matter, I so far shook the Court of Appeal as to delay its judgment for one day. It was the case of the Federalist, a ship belonging to citizens of the United States of America, with whom we were in strict alliance. The ground of confiscation was a strip of carpet by the captain's bedside. It was discovered, or pretended to be discovered, that this bit of carpeting was of English

manufacture. On this pretence the ship and her whole cargo, worth a million and a half of francs, had been condemned. At the conclusion of my address, the Court was proceeding to reverse the condemnation. One judge only suggested a doubt. The decision was adjourned to the next day, and was then given in favour of the captors.

'The ultimate results were, that not a vessel ventured to approach a French port; that we were cut off from the supply of indispensable commodities; that our privateers, acting without concert and without prudence, fell into the power of the English cruisers; that our maritime population was crowded into the English prisons; that our colonies were lost for want of sailors to form a military marine; and, ultimately, when the day of retribution arrived, the state had to pay for the plunder which had been profitable only to a few individuals.' *

The revolution which placed Bonaparte on the consular throne was unquestionably beneficial. The despotism which seems to be the inevitable result of military rule, was more tolerable than that of the factions which owed to treason their rise and their fall. Even the tyranny of the empire was as great an improvement on the intrigues and violence of the Directory, as the Directory was on the anarchy of the Convention.

We are inclined, indeed, to consider the eighteen months of the Peace of Amiens as the most brilliant

* This narrative is extracted, with some changes of arrangement, from the second volume, cap. iii. § 1, 2.

portion of the history of France since the death of Charlemagne. England was supposed to be incapable of any but maritime war, and had accepted an insecure and dishonourable peace. The force of Russia was unknown, and neither Austria nor Prussia had yet adopted the systems which, at the expense of all the other objects of government, now give them powers offensive and defensive which their happier ancestors never contemplated. The military supremacy of France seemed established; and it was supported by a territory as extensive as can be usefully united in one empire. She had incorporated Savoy, Piedmont, the Milanese, a considerable part of Switzerland, and all the great and rich countries that lie between her present frontier and the Rhine. The portions of Holland, Switzerland, and Northern Italy, which she had not made French, were her dependencies. It is true that under the empire she acquired a still more extended territory, and a still larger body of subordinate allies; but her subsequent acquisitions were not ratified by England. They were mere incidents in a fearful game, liable to be torn away, and in fact actually torn away, as soon as her fatal system of playing double or quits should produce its usual result. At the Peace of Amiens her gains were realised. Had she remained contented with them, she would probably now form the most powerful empire that the world has seen. She would possess fifty millions of rich, warlike, and highly civilised inhabitants, with the best soil, the best climate, the best frontier, and the best position, on the continent.

The same remark may be extended to the extraordinary man who had seized the command of her destinies. He then enjoyed more real power, more real popularity, and more real glory, than at any subsequent period of his career. As a soldier, he never repeated the miracles of his Italian victories. In his subsequent campaigns he obtained vast and decisive advantages when he had a superior force; suffered vast and decisive defeats when his force was inferior; and when the force on each side was nearly balanced, as at Eylau, Aspern, Borodino, and Ligny, so was the success. As a politician, he was known only as a pacificator; he had had nothing to do with the origin of the three great wars in which he had been an actor; and he had concluded each of them by a glorious peace. He owed, it is true, his power to usurpation, but it was the most pardonable usurpation that history records. Those whom he deposed were themselves usurpers, and for hundreds that regretted the change, there were millions that hailed it with delight. Never was there an easier or a more popular revolution; and, up to the time of which we are speaking, the millions appeared to be right. He had given to France internal as well as external peace. He had restored the rule of law, and made it omnipotent against all except himself. He had laid the foundation of a code which, with all its defects, is superior to that of any other continental nation. He had restored religion, not indeed in its purest form, but in the form most attractive to a people among whom imagination and passion predominate over reason, and who yield more readily

to feeling, to authority, and to example, than to conviction. With religion he had restored decency of manners, and, in a considerable degree, decency of morals. He had effected all this under the forms of a constitution, which, depending not on the balanced rights and privileges of classes, but on the simple basis of centralised power, gave to the body of the people the equality which they seem to prefer to real liberty and to real security.

One of the first acts of the Consulate was to withdraw matters of prize from the ordinary tribunals, and place them in the hands of a department of the government, denominated the *Conseil des Prises*. The unfitness of the petty local courts had been shown; but the referring questions of pure law to an administrative instead of a legal body, was a strange anomaly. And when we add that the persons appointed to decide between French captors and neutral owners were mere officers of the executive, removable at pleasure, the anomaly became an oppression. It is strange that M. Berryer, himself a lawyer, approves of this institution: he had soon a remarkable opportunity of ascertaining its impartiality and its integrity.

'Holland,' says M. Berryer, 'at that time forming the Batavian Republic, was in the year 1797 the unhappy ally of the Republic of France. The price of the alliance had been the loss of all her colonies, and of all maritime commerce under her own flag: for all Indian commodities, and particularly for tea, in Holland a necessary of life, she depended on that of Denmark, the only flag respected by England on the southern ocean.

'In the autumn of 1797 the Batavian Republic wished to import a year's supply of green tea. The attempt to send from Amsterdam to Canton ten millions of francs of Dutch property, and to bring it back in so peculiar a form, was difficult and perilous; on the one hand the seas of Africa and Asia were swarming with English cruisers, which respected no flag but the Danish, and on the other hand the seas of Europe were filled with the privateers of the dear ally of Holland, which respected no flag whatever.

'To delude the English cruisers, a ship which had belonged to the English East India Company was purchased and sent to Copenhagen. There she was named the Caninholm; her captain was naturalised as a Dane; she had a whole set of Danish papers, and cleared for Tranquebar, a Danish settlement; taking in at Portsmouth her outward cargo in dollars. These precautions were supposed, and indeed proved, sufficient as regarded the cruisers of the enemy, England; the real danger was from those of the ally, France. To ward off this the Batavian government took into their confidence the French government, then consisting of the Directory, and obtained their sanction to the expedition, and a license or protection against all interference by French vessels. As a further precaution, a Dutch supercargo was taken in at Tranquebar, and the Caninholm, on her return voyage, cleared out at Canton for the Texel.

'The expedition lasted more than eighteen months. The Caninholm left Copenhagen in November 1797, and it was in June 1799 that she was captured as she entered

the European seas by a French privateer, and carried into Bordeaux. The captain instantly went on shore to show his license to the Bordeaux authorities; but no justice was to be expected in a privateering town, when a prize of ten millions of francs was in dispute. The ship was of course condemned. The owners appealed, but, before they could be heard, the revolution of 1799 had overthrown the Directory. The consular government refused to recognise the contracts of its predecessors or the rights of its ally, and the Caninholm was definitely condemned as English property. I ascertained afterwards that Bonnet and Co., the owners of the privateer, had been obliged to scatter some of their prey to keep the remainder. Bills accepted by them suddenly appeared in the Paris market; I myself had to advise proceedings on more than half a million's worth of them.'*

Some branches of the legal profession may flourish under a despot; attorneys and chamber counsel do not excite his jealousy; and judges are the best instruments of his power. They enable him to express his will in the form of general principles, and thus to regulate the actions of millions, of whose individual existence he is not even aware. They convert resistance to his power into a breach of law, and punish it without his apparent interference. An army or a mob may give power to its chief; but that power cannot be safe until it is supported by legal forms, enforced by legal authorities.

But no arbitrary ruler looks favourably on advocates.

* Vol. ii. § 3.

The bar is essentially an aristocracy in the noblest sense of that term; the relative position of its members depends on their merit; the smiles of the crown cannot give reputation to mediocrity, its frowns cannot depress diligence and talent. The functions of the bar are still more offensive than its independence; its business is to discuss, and an absolute government hates discussion: its business is to enforce the observance of general rules and adherents to precedents: such a government, though it requires obedience to them from others, refuses itself to be bound by either. 'Every day,' said Bonaparte, and he was then only Consul, 'one must break through positive laws; there is no other mode of proceeding. The action of the government must never be impeded — there must be no opposition.' *

Again, a bar, though it offers its services indifferently to the government and to its subjects, is really useful only to the latter. Such a government does not require the aid of an advocate to persuade judges to be subservient to a power which appoints, promotes, and removes them; but to those whom the government is attacking, his assistance is inestimable. He may sometimes be able to protect their lives or their fortunes, and he can almost always protect their reputation. All other appeals to public opinion may be tolerated up to a certain point, and silently prevented from passing the prescribed limit. A censorship may effectually chain the press without attracting attention to any given case of interference; but if an advocate has

* Thibaudeau, *Mémoires sur le Consulat*, pp. 229, 231.

been once allowed to speak, he cannot be stopped without an apparent denial of justice.

Bonaparte, who had all the jealousies and the instincts of ambition in their utmost intensity, must, under any circumstances, have hated the French bar; but he had also a personal quarrel with its members: out of more than two hundred advocates, only three voted in favour of the empire, and this was a subject on which he never forgave opposition. He restored indeed the order, but he deprived it of self-government, and laid it at the feet of the imperial authorities. The express permission of the chief judge was made necessary before an advocate could plead in any court but his own; the attorney-general selected the members of the *Conseils de discipline*, which regulated the internal affairs of the order; and he also selected from them the *bâtonnier*, or president of the bar; and, finally, the chief judge had an arbitrary power of suspension, and even of expulsion.

M. Berryer himself incurred Bonaparte's especial displeasure. He had been counsel against Bourrienne before Bourrienne had lost his master's favour; he had defended Moreau and Dupont, and the family of Monnett the unfortunate defender of Flushing. For these offences he was excluded from the Tribunate, and from the honours of the bar; but the contest which he appears to think the most dangerous was his defence of M. the Mayor of Antwerp, in 1812 and 1813.

The mayor, an old man of high character and great wealth, and once in high favour with Bonaparte, married

a young wife, who quarrelled with the wife of the commissioner of police about a box in the theatre. The commissioner revenged himself by accusing the mayor, and three other municipal officers, of embezzling the proceeds of the *Octroi* of Antwerp; and, having Bonaparte's confidence, contrived to render him the determined enemy of the accused.

The indictment was an enormous instrument: the attorney-general of the imperial court of Brussels, which then included Antwerp in its jurisdiction, was said to have been killed by the labour of preparing it. The trial took place at Brussels, before a jury consisting of the principal persons of the country. After it had gone on for some days, it became clear that it must terminate by an acquittal. The law officers who conducted the prosecution, therefore, interrupted its progress, by indicting for perjury two of the mayor's witnesses. As, according to French law, this matter was to be disposed of before the mayor's trial could be concluded, the latter was thrown over to a subsequent session and a new jury. The indictment against the witnesses utterly failed, and the mayor's trial was resumed. A new jury was selected solely from Frenchmen, most of them public functionaries, and all devoted to the emperor, whose determination to destroy the mayor was now notorious. We will pursue the narrative in M. Berryer's words: —

'On my second arrival at Brussels, I had to unveil before the jury the complicated iniquity of the prosecution. I referred to the oppressive indictment of the witnesses for the defence, and showed it to have been a trick to get rid

of the first jury. I dwelt on the absence of any documentary evidence against my clients, and refuted all the verbal testimony which had been procured. The trial, after several days of hearing, ended by a general acquittal. The whole population of Brussels surrounded the mayor, and drew his carriage in triumph to his hotel. Even when I left the town late in the evening, on my return to Paris, the streets were still resounding with music and acclamations. The news reached Bonaparte at Dresden, and put him into a state of fury. He instantly sent a violent despatch to Paris, ordering the mayor and his co-defendants to be re-tried, and even the jury to be tried for having acquitted them. The minister of justice transmitted the order to M. Argenson, the prefect of Antwerp. M. Argenson replied that it was impossible to try men again on charges from which a jury had acquitted them. The Council of State was assembled, and decided that the imperial command must be obeyed. This decision was notified to M. Argenson. He merely repeated his refusal. Application was now made by the minister of justice to the Senate, as the highest body in the state. The Senate referred the matter to a committee. I flew to the Luxembourg, and obtained an interview with a member of the committee. He heard all I had to say, agreed with me that such a profanation of the forms and of the substance of law would be disastrous, but ended by saying, "After all, what would you have us do? do you not perceive that we should upset ourselves?"

'The committee accordingly reported as the Council of

State had done before; and by virtue of a decree of the Senate, the mayor and his supposed accomplices were directed to be tried before the Court of Assizes of Douai. I heard of the decree before it was published, and had time to advise two of those who had been acquitted with the mayor, and some of the members of the jury who had fled to me in Paris for my aid in the extreme danger in which they were placed, to avoid the storm by concealing themselves. M. Argenson not only persisted in his refusal, but resigned. Other persons, however, less scrupulous were found, and the mayor was arrested and conveyed to the prison of Douai. Worn out, however, by oppression and anxiety, he died there, before the period of trial. Indeed, before that trial could have been terminated, the man who had been mad enough to order it had ceased to reign.' *

Though a stanch royalist, M. Berryer does not appear to have been one of the enthusiastic welcomers of the Restoration. It was connected, indeed, with the loss of his fortune, the honourable accumulation of thirty-four years of labour. A manufacturer who had been the victim of the fraud and ingratitude of his partners, became his client. He obtained for him damages sufficient to form the nucleus of a capital, and, by becoming his guarantee to a banking company, enabled him to establish himself as a cotton-spinner at Rouen. M. Berryer's security for the sums advanced on his guarantee, was the deposit of twist of double the value. At the time of the Restoration, the amount for which M. Berryer was liable exceeded 25,000*l.*;

* Vol. i. pp. 350-354.

for which he held twist valued at 50,000*l.* The relaxation of prohibitory duties in the first effervescence of the Restoration, instantly reduced the value of the twist to 8,000*l.* The bankers required a further security. M. Berryer was forced to mortgage, and ultimately to sell, all his own estates, and also all those of his wife, for she generously consented to surrender them.

Soon afterwards came the most important of M. Berryer's causes — a cause in which his exertions, though unproductive to his client, and injurious to his own interests, were honourable to his talents and to his courage. This was the trial of Marshal Ney. The many years which have elapsed since that striking event, may have effaced its details from the memories of many of our readers. We will shortly recapitulate them : —

In the beginning of 1815, Marshal Ney was governor of Besançon, but residing on his estate near Châteaudun, a town between Chartres and Orleans, about eighty miles from Paris. On the 6th of March he received an order from Soult, then minister of war, to proceed to Besançon. News travels slowly in France : though Bonaparte had been five days in Provence, the fact was unknown at Châteaudun, and Ney, curious as to the motive of the order, took Paris in his road. He arrived on the 7th, and found M. Batardy, his attorney, at his house waiting for him.* They arranged some private business, and Batardy, surprised at Ney's making no allusion to what occupied every mind in Paris,

* See M. Batardy's deposition. 'Procès du Maréchal Ney,' Michaud. No. i. p. 51.

ventured to remark, 'This is a strange event.' 'What event?' answered Ney. 'Don't you know,' replied Batardy, 'that Bonaparte has landed at Cannes — that Monsieur proceeded this morning to Lyons, and that you are ordered to your government?' At first Ney treated the news as incredible; but when he was told that it was officially stated in the 'Moniteur,' he leant his head upon the mantelpiece and exclaimed, 'What a calamity!—what a horrible event! What can be done? what is there to oppose such a man as that? Would he have ventured to return unless he had relied on finding here enemies to the government?'

Ney went immediately to the minister, and was told that he would find his instructions at Besançon. He then saw the King, made his memorable promise to bring back Bonaparte in a cage, left Paris for Besançon, and appears to have arrived there during the night between the 9th and 10th. The 10th he employed in directing the forces under his control to meet at Lons le Saulnier, a small town to the south of Besançon, and to the east of the high road from Lyons to Paris. On the 11th he set out himself for Lons le Saulnier.

In the meantime, Grenoble had opened its gates to Bonaparte; he had rushed forward to Lyons, the second city in France, occupied by a considerable force under Monsieur and Marshal Macdonald. The city and the garrison had received him with enthusiam; Monsieur and Macdonald had been forced to fly; the trifling band with which he had landed had been swelled by the garrisons of

Grenoble and Lyons to more than 10,000 men, and was augmenting every day by the desertion from the royal forces of individuals, companies, and even regiments. On his road, Ney met M. de St. Amour and M. de Soran returning from Lyons, who described to him the revolutionary madness which they had witnessed in the people, and the cries of *Vive l'Empereur* which they had heard from the troops whom they had met on their march.

In the morning of the 12th, Ney reached Lons le Saulnier. During the whole of that day, and until the night of the 13th, he appears to have been making active preparations to attack Bonaparte, or at least to resist him. The troops nominally under his order did not amount to 5,000 men; they were deficient in ammunition, and scarcely provided with artillery — the artillery horses having been hired by the farmers, and not to be found when unexpectedly wanted. Bonaparte's proclamations were scattered round, and seemed everywhere to produce their intended effects. In the evening of the 13th, Ney's spies informed him that Bonaparte, preceding his own forces with an escort of only forty men, had entered Mâcon in triumph; that from Mâcon to Bourg (which is only seven posts from Lons le Saulnier) the whole country was in what the French call *exaltation* — that even the villagers, and the people in the fields, were crying *Vive l'Empereur*. Ney's last acts on the 13th were to make arrangements — the prudence and details of which raised the admiration of the peers at his trial,* — to write to

* See Procès, No. iv. p. 14.

Marshals Suchet and Oudinot, who were cooperating with him in support of the royal cause; and to require all the regimental and non-commissioned officers of his small force, separately, to swear before him to be faithful to the Bourbons. It is to be observed that on this very day, at a council held in the Tuileries, it was admitted that resistance was hopeless — that not a soldier would fire on his former Emperor — and that the only debatable question was, in what direction the King should fly.*

Late in the night between the 13th and 14th, Ney was guilty of his first breach of duty. He admitted messengers from Bonaparte: they brought him a letter from Bertrand, assuring him that Louis had been betrayed by his ministers; that troops devoted to Bonaparte had been posted along the road to Paris, so as to insure his advance without opposition; and that the whole enterprise had been concerted with England and Austria. The folly of the last statements ought not to revolt us, when we remember that the successor to Napoleon was the grandson of Francis; and that M. Berryer, who has passed his life in estimating evidence, even now believes that we effected Bonaparte's escape. Absurd as they really were, they did not appear so to Ney. With Bertrand's letter came a proclamation ready prepared in the name of Ney, in which he was made to declare that the cause of the Bourbons was lost for ever, and that liberty and Napoleon were triumphant. And there came also orders from Bonaparte, expressed as if the old relations between himself and Ney

* See the details in Bourrienne, vol. x. cap. 16. Bourrienne was present.

had remained uninterrupted, and giving him instructions in the style which he had long been accustomed to obey.

Between three and four in the morning of the 14th, he was roused from his sleep by M. de Capelle, the prefect of Bourg, who came to tell him that one of his regiments, the 76th, stationed at Bourg, had proclaimed Bonaparte; that even the regiment at St. Amour, which formed the advanced guard of the small force at Lons le Saulnier, was preparing to go over; and that throughout the country the higher classes were stupefied, and the lower mad with revolutionary excitement. This information appears to have convinced him of the impossibility of further opposition. 'Can I stop,' he said to M. de Capelle, 'with my hand the rising of the tide?' A few hours afterwards he ordered his troops to be called together; but before he took a decisive step, summoned the two generals next him in command, Bourmont and Lecourbe, both of them supposed to be devoted to the King, showed them the proclamation, repeated the contents of Bertrand's letter, and asked their advice. No fourth person was present. Bourmont and Lecourbe state that they urged him to remain faithful to the King; Ney maintains that they approved of his joining Bonaparte. It is in favour of Ney's statement, that they both accompanied him to the parade where the troops were formed in square, stood on each side of him while he read the proclamation, heard it without any expression of dissent, and dined with him the same evening.

The dinner was silent and melancholy. We fully believe Ney's account of the effect produced on his own

mind by the irrevocable step which he had taken. 'From the time of that unhappy proclamation life was a burden to me; I wished for nothing but death, and did all I could to find it at Waterloo. A hundred times I was on the point of blowing out my brains; all that restrained me was my wish to defend my character. I knew that all honourable men must blame me—I blamed myself. I did wrong, I admit it, but I was not a traitor; I was partly deceived, and partly carried away.'*

Ney proceeded to meet Bonaparte at Dijon; and a few days afterwards was ordered to visit the northern and eastern frontier, from Lille to Landau, to ascertain the state of the fortresses and hospitals; and to publish everywhere that Bonaparte had returned under a treaty between himself, England, and Austria—stipulating that he was never to carry on war beyond the frontier of France; that he was to give France a liberal constitution; and that his wife and child were to remain as hostages in Vienna until he had performed all the positive parts of his engagement.† Having executed his mission, he retired into the country, and took so little part in the transactions of April and May, that when, on the 1st of June, he appeared at the ceremony of the acceptance of the new constitution, Bonaparte told him that he thought he had emigrated. 'I ought to have done so long ago,' answered Ney; 'now it is too late.'‡

He returned after the battle of Waterloo to Paris; and by his bold exposition in the Chamber of Peers, on the

* Procès, No. i. p. 12. † Ibid. p. 27. ‡ Ibid. p. 12.

22nd of June, of the real facts and consequences of the battle, materially assisted in driving Bonaparte from power. In that speech, Ney maintained that the allies would be before Paris in a week. His prediction was accomplished; and on the morning of the 3rd of July it seemed probable that, before the evening, a battle would have been fought, more disastrous to France, and particularly to Paris, than any event in the history of the French nation. Davoust, who commanded the army defending the town, had a large body of infantry (80,000 men, according to M. Berryer*), 25,000 cavalry, and between four and five hundred pieces of field artillery† — a force insufficient for victory, but sufficient to maintain a contest destructive of the city in which it was to take place.

Already the firing had begun, when the provisional government and Davoust sent to propose a negotiation; of which the bases were to be, the entry of the allied forces on the one hand, and the preservation of Paris and the security of all who inhabited it on the other. On these terms, the convention of the 3rd of July, 1815, was framed; and ratified by the Duke of Wellington and Blucher on the part of the allies, and by Davoust on the part of the provisional government. The twelfth article provided that all the inhabitants, and generally all persons found in Paris, should continue to enjoy all their rights and liberty, and should not be liable to any molestation or enquiry whatsoever, with relation to their functions,

* Vol. i. p. 374.

† See the evidence, Procès, No. iv. p. 19.

to their conduct, or to their political opinions. It appears from the evidence of General Guilleminot, one of the negotiators of the convention, that this was the clause to which the defenders of Paris attached the most importance. Had it been refused, he was to break off the discussion, and the battle would have commenced.*

Relying on the protection given to him by the convention, Ney remained in Paris till the 6th of July, and continued in France until the 3rd of August; when he was arrested on a charge of treason, and ordered to be tried by a court-martial, comprising among its members four of the marshals of France. Ney protested against the jurisdiction of such a tribunal, and the court, unfortunately, as M. Berryer thinks, for the prisoner, declared itself incompetent.

The cause, therefore, was transferred to the House of Peers; the court appointed by the Charter for the trial of treason. The object of Ney's counsel was to gain time. They knew, from the experience of thirty-five years of revolution, that political resentment is a passion as fleeting as it is fierce, and that, if a delay of a few months could be obtained, the government would no longer have the courage to execute him, nor indeed the wish. For this purpose they endeavoured to show that, although the Charter rendered treason cognisable by the House of Peers, yet it laid down no rules by which the House was to be governed when sitting as a court of criminal justice; and they required that the trial should be suspended until a

* Procès, No. iv. p. 20.

law regulating the procedure of the House should have been passed. M. Berryer's speech* is an admirable specimen of legal and constitutional reasoning; and indicates, with great sagacity, the errors into which such a tribunal, unless supported and directed by strict regulations, would be likely to fall. The House, however, after a secret deliberation of an hour and a half, decided that the trial should go on. Objections were then raised to the indictment, and, though they were overruled, so much time was gained, that the House, which had met for the trial on the 11th of November, did not really begin it till the 4th of December.

In the meantime, Ney had applied to the ministers of the allied powers, and required them to interfere, and to prevent the convention of the 3rd of July from being violated in his person. Their answer, drawn up by the Duke of Wellington, and adopted by the ministers of Austria and Prussia, stated, that 'the object of the 12th article was to prevent the adoption of any measure of severity, under the military authority of those who made it, towards any persons in Paris, on account of the offices which they had filled, or their conduct, or their political opinions; but it was not intended, and could not be intended, to prevent either the existing French government, or any French government which should succeed to it, from acting in this respect as it might deem fit.'†

* Procès, No. ii. p. 32.

† British and Foregn State Papers, 1815, 1816, printed by the Foreign Office, p. 262.

In this extremity Madame Ney sought the aid of Lord Holland, a name illustrious throughout Europe as the friend of the oppressed. She requested him to lay Ney's memorial before the Prince Regent. It was done; but the only effect was a letter from Lord Liverpool, referring her to the communication already made to her husband by the Duke of Wellington.* Lord Holland, however, did not yet despair. He still thought that the Duke of Wellington's interference might be obtained, and must be decisive; and in that hope he addressed to their common friend, Lord Kinnaird, then at Paris, a letter which was to be shown to the Duke. What effect it might have had cannot be told. It arrived the day after the sentence had been executed. As this admirable letter has never been published, we cannot resist the temptation of extracting, from the original, preserved in the archives of Holland House, some of its most material passages.

'Middleton: Dec. 5, 1816.

'Dear Kinnaird,

'What is passin at Paris annoys me more than I can describe. For La Valette, on the score of private acquaintance, though slight, I am much concerned; but from regard to the character of our country, and to that of the Duke of Wellington (in whom, after the great things he has done, even as decided an opponent of the war as myself must feel a national interest), I have conceived more horror at the trials and executions going on in the

* British and Foreign State Papers, 1815, 1816, printed by the Foreign Office, p. 272.

teeth of our capitulation than mere humanity could create.

'How can such a man as Wellington assert that the impunity for political conduct extends only to impunity from the allies for offences committed against *them*? When ships, when garrisons surrender, do the captains or commanders stipulate that the foreign conqueror shall not molest them for their political exertions? With or without such stipulations, what shadow of right has a foreign enemy to punish individuals for opinions held, or conduct pursued, in their own country? It is clear that the impunity promised was impunity for crimes, real or supposed, against a French government. If the French government was a party to that promise, by that promise it must abide. If not, the other allies are bound in honour not to deliver over a town taken in virtue of it, without exacting the same terms from those to whom they deliver it.

'Such, perhaps, is the formal technical way of putting the argument. Practically and substantially the case, if not more striking, is yet more conclusive to men of justice and honour. The allies have virtually, I might say formally too, been masters of Paris, while the persons who delivered it to them on the faith of impunity for political offences, have for political offences been imprisoned, tried, condemned, and executed! Wellington has himself precluded all doubt on the question. He maintains, in his letter to Lord Castlereagh, that there is no article in the capitulation securing to the town of Paris the pictures and statues; and therefore he argues, and he acts on his argument, that the

allies may seize the pictures, &c., and seize them without any *fresh* or formal cession from Louis XVIII. Up to that time, then, the allies, according to him, were in military possession of Paris, and up to that time, therefore, even upon his own view of the subject, the inhabitants were entitled to claim impunity for all political opinions and conduct. Those who had the right and the power of taking forcibly from Paris, property not specified or disposed of in the capitulation, notwithstanding the nominal government of Louis XVIII., must surely have a right to enforce on any such nominal and dependent government the observance of promises, on the faith of which the inhabitants had surrendered the town.

'Technical arguments may possibly be urged on both sides; and, though they appear to me all in favour of Ney's claim, it is not on them that I lay stress, but on the obvious and practical aspect of the transaction as it must strike impartial men and posterity. The plain relation of the events in history will be this. A promise of security was held out to the inhabitants of Paris—they surrendered the town, and while Wellington and the allies were still really in possession of it, Labedoyere was executed, and Ney was tried for political opinions and conduct. Even of subsequent executions, and I fear there will be many, it will be said—The allies delivered over their authority, in Paris, to a French government, without exacting an observance of the stipulations on which they had originally acquired it.

'Had we taken Martinique in 1794, on a promise of not

molesting individuals for political opinions or conduct, should we have been at liberty to cede it, had Louis XVIII. been then restored, without insisting on the impunity of all political offenders; or, at the very least, on the right of leaving the country for all such as might have so offended? In Egypt the French stipulated that no natives should be molested for their conduct or opinions during the war. We took military possession of the country on these terms, and then delivered it over to the political authority of the Ottoman Porte. When, however, the Capitan Pasha, acting under that authority, began murdering the Beys, and proceeding against the adherents of the French, we not only remonstrated and threatened, but actually protected the persecuted men within our own lines. Yet, by reference to the history of those times, we find that many blamed Lord Hutchinson for not having had recourse to yet more violent methods, to enforce on the legitimate political authority the observance of engagements entered into by our military power on taking military possession of the country.

'What would Wellington himself have said, if the British troops had surrendered any town in Spain to the French with a similar stipulation, and if, on the flimsy and hypocritical subterfuge of a distinction between Joseph's government and the French military authorities, all the Spaniards who had assisted us during the siege had been prosecuted for treason against Joseph? Yet where is the distinction?

'The want of principle and consistency, and the disgust-

ing changes of the marshals, have, I know, steeled men's minds to their sufferings. This is natural enough. But when the violence of the times is gone by, and, above all, when the tomb has closed on their offences, the transaction will be judged with reference to the nature of the promise, not to the conduct or misconduct of the sufferers. *Si ego digna in quam faceres, tu tamen indignus qui feceris, Pamphile.*

'Nor is this all. If we judge by former instances, even the crime itself will be regarded with more indulgence by posterity than any irregular mode of punishing it. Allowance for individuals is made in all great changes. It is difficult in sudden emergencies and great convulsions of state, especially for professional men whose lives have been passed in camps, to weigh maturely all the considerations by which their conduct should, in the strict line of duty, be regulated. Unforeseen cases occur, and men of good principles and understanding are hurried into acts of inconsistency and political immorality.

'In this latter view of the subject, I know that I am somewhat singular. Few at present make such allowances for the political tergiversations of the marshals; and many, more indulgent than I am in their judgement of political apostasy in England, are quite outrageous with Frenchmen for not acting with inflexible principle in the most trying and difficult circumstances. Some, however, among the most indignant at their crimes, yet doubt the justice, policy, and safety of punishing them; and more, especially among the moderate of all parties, think the

claim of the capitulation conclusive; or, if not quite so, of a nature questionable enough to induce Wellington, for the preservation of his own and the national character, to give it the construction most favourable to the weaker party.

'My opinion is of no importance; but it is so strong that I could not resist expressing it to you, who have access to those whose character is most interested in forming a sound one on this important subject. I have not spoken of La Valette. All my arguments apply in his favour as strongly as in Ney's; and surely he is not, as others may be, any object of a bystander's indignation. He seems an honourable man throughout.—Yours ever truly,

'VASSALL HOLLAND.'

The progress of the trial had been comparatively rapid. In two sittings, on the 5th and 6th of December, each party proved satisfactorily their principal points; the accusers, that the treason was legally completed — the defenders, that the crime had been unpremeditated. But when M. Berryer opened the real defence, the convention of the 3rd of July, he was interrupted by the counsel for the Crown. M. Bellart, their leader, protested against any allusions to a convention, the conditions of which had been demanded by rebels, and had never been accepted by the King; and he presented to the House a requisition, by which he formally opposed the reading of the convention, and any allusion to it, and required the House, by the Chancellor, its president, to order Marshal Ney and his

defenders to confine their defence to the mere facts of the indictment.

The Chancellor, speaking in the name of the House, answered that, foreseeing the line of defence that would be adopted, he had already taken the opinion of the House; and that the peers had decided, by a large majority, that it would be highly improper to rely in that House on a convention to which the King was no party, and by which it was obvious, from the mere fact of Ney's prosecution, that His Majesty did not consider himself bound. He therefore forbade the defenders to make any use of the convention. Ney's counsel replied, that they bowed to the will of the King, and to the decision which the court, without hearing them, had thought fit to adopt; but that they felt bound to offer a plea to the jurisdiction of the court—namely, that Sarre Louis, the birthplace of their client, having been ceded to Prussia, he was no longer a subject of France.

Here, however, the counsel were interrupted by Ney.

"No!" he exclaimed; "I was born a Frenchman—I will die a Frenchman. Up to this time my defence has been free, but I now see that it is to be fettered. I thank my generous defenders for the exertions which they have made, and which they are ready to make; but I had rather have no defence than the mere shadow of one. If, when I am accused in the teeth of a solemn treaty, I am not allowed to appeal to it, I must appeal to Europe and to posterity."

"Gentlemen, counsel for the prisoner," said the

Chancellor, "continue your defence within the limits which I have prescribed."

"'My lord," said Ney, "I forbid my counsel to say another word. Your excellency may give to the House what orders you think fit; but, as to my counsel, they may go on if they are free, but if they are to be restrained by your limits, I forbid them to speak. You see," he said, turning to M. Berryer, who was anxious to continue, "that it is a decided thing. I had rather have no defence than one chalked out by my accusers."

'"Then," said M. Bellart, "we waive our right of reply; if the defence is at an end so is the accusation. We have only to demand the judgement of the Court."

'"Have you anything to add?" said the Chancellor, turning to the prisoner and his counsel.

'"Nothing whatever," replied Ney, in rather an impatient tone.'*

The Chamber was then cleared, and the peers alone remained in deliberation; the result of their deliberation, and of the attempts afterwards made to obtain a pardon, are too notorious to require repetition.

The execution of Ney was one of the grossest faults of the Restoration: his crime was great—he himself appears to have admitted that it was so; but, as we have seen, it was not premeditated; only a few hours elapsed between his active fidelity and his treason; it was the effect of the pressure of circumstances of extraordinary difficulty and perplexity on a mind unaccustomed to balance conflicting

* Procès, No. iv. pp. 37, 38, 39. Berryer, vol. i. p. 376.

motives. If Ney had been a man of higher education, he would have felt that no motive justifies a failure in honour. But he had been trained in revolutionary camps; the only fidelity to which he had been accustomed was fidelity to France, and fidelity to the Emperor. He was now required to become an emigrant from the one and an opponent to the other; he was required to do this, though he believed the cause of the Bourbons to be irretrievably lost, and the reign of Bonaparte an inevitable calamity. No one can doubt what his conduct ought to have been; but no one can wonder at what it actually was. It must be added, that his treason was really harmless; no opposition on his part could have retarded, by a single hour, the entry of Bonaparte into Paris. If he had followed the example of Macdonald, he must have shared his fate—have seen his troops join the usurper, and then have fled across the frontier; the only consequence would have been, that Bonaparte would have had one brave man less at Quatre-Bras and Waterloo. Under such circumstances, his execution, even if it had been legal, would have been impolitic. Public opinion would have sanctioned his banishment, but not his death.

But the judgement under which he suffered was manifestly illegal. Royalist as he is, M. Berryer is so convinced of this, that he accounts for it by the irrational supposition that it was extorted from the King by the allied powers for the mere purpose of degrading the French army. Ney was included in the words and in the spirit of the convention. To deny validity to the convention

because it was entered into with rebels, was to affirm the execrable doctrine, that faith is not to be kept in civil war. To deny its validity because it was not formally accepted by the King, was to add fraud to oppression; for what can be a baser fraud than to accept the benefits of an agreement and to refuse its obligations? There was not a human being to whom that convention was so beneficial as Louis. If it had not been effected — if, after the slaughter of 25,000 of its defenders, Paris had had to endure the horrors of a town taken by assault, could Louis have retained a crown so recovered for a longer period than while English and Austrian troops occupied his capital and his country? Louis owed to that convention his throne as an independent monarch. When we recollect this, it is unnecessary to refer to the well-known fact alluded to by M. Berryer, that Louis *did* expressly recognise the convention, by appealing to it in order to prevent Blucher from destroying the Pont de Jena.

As is usually the case with political crimes, it received its retribution. The recollection of Ney's death was one of the principal causes of the unpopularity with the army which haunted the elder Bourbons; and fifteen years afterwards, when, in their utmost need, they had to rely on the army for support, that recollection precipitated their fall.

We have said that the trial of Ney exercised an unfavourable influence on the subsequent fortunes of M. Berryer. He had obtained from the King the fullest permission to act for the prisoner — a permission which

might have been supposed to be unnecessary to an advocate filling no office under the crown; but, though the permission was granted, the act was registered as an offence. It was thought, too, that he had too much identified himself with his client. In his honest indignation against the restriction imposed on the defence, he had ventured to call it a denial of justice; and, what was worse, in consequence of the recollections which the term excited—a revolutionary proceeding: this seems never to have been forgiven. The result was, that he was excluded under the Restoration, as he had been under the empire, from the *Conseil de Discipline* and the dignity of *Bâtonnier*, an exclusion to which he attaches what seems to us an undue importance.

The subsequent life of M. Berryer contains no facts sufficiently interesting to lead us to dwell on them. In 1825 he visited London, on business connected with the administration of the estate of a French subject who died in England. He was charmed, as might have been expected, with his reception by '*Sir Coppley* (*aujourd' hui Lord Linthurst*), *Atthorney-Gênêral*' (we copy literatim); gratified by the respect paid to him when he appeared in court; and amused by finding there people 'en perruque à la Louis XIV.' He ascertained, he says, that his reception was meant as a return for that with which Lord Erskine had been honoured, at a sitting of the *Cour d'Appel* of Paris. This, however, we can assure him is a mistake. It was scarcely possible that any one of those who rose in Westminster Hall to welcome a distinguished

stranger, could have heard how Lord Erskine had been treated twenty years before in Paris; and it must be added, that the mere announcement of M. Berryer's name was a sufficient passport to the attention of a British bar.

Soon after his return from London M. Berryer ceased to appear regularly in court; he was entering his sixty-ninth year, and began to feel daily contests oppressive. He found, too, his eldest son, by this time a distinguished advocate, often opposed to him; he thinks that this was done by the suitors intentionally, which is not very probable, since it diminished the efficiency of the son as much as that of the father. The result has been, that for some years he has nearly confined himself to chamber business and arbitrations. He continued, indeed, up to the time of the publication of his memoirs, to plead at the bar in causes in which he possessed peculiar information. The last circumstance of this kind which he mentions took place at Rouen in the end of the year 1837; and he relates with pleasure his reappearance, after an interval of sixty years, on the scene of one of his earliest triumphs.

M. Berryer dwells with just pride on the extent and long continuance of his labours. When we consider that his practice embraced every branch of jurisprudence, ecclesiastical, international, civil, and criminal; that he performed the duties of a solicitor as well as those of a barrister; and that he has been engaged in these duties, with scarcely any interruption, for more than sixty years; his readiness to undergo toil, and his power of enduring

it, are perhaps unparalleled. He attributes his success to his domestic happiness, and to a natural gaiety of disposition, fostered by the amenity, and, to use his own expression, the joyousness, of the manners and habits which for the first thirty-four years of his life adorned his country. But now, he says, no one smiles in France; he finds himself, between eighty and ninety, too young for his associates, and is forced to repress a thousand sallies which the gravity of the times would not tolerate. He tells us, that for the same reason he has suppressed the most amusing parts of his 'Recollections;' and defers his full revelations until a period when the public may be better prepared for them.

He has appended to the narrative portion of his work some propositions on Political Economy and Legislation, the results of his long experience and meditation. We cannot venture to call the attention of our readers to them on any other ground than as specimens of the degree of knowledge on these subjects which has been acquired by a French lawyer, far superior in intelligence to the bulk of his brethren.

He conceives it to be the duty of the government to regulate production, and promote an equivalent consumption. For the first purpose, he thinks that the minister of commerce ought to direct, by a perpetual course of regulations founded on accurate statistical facts, all the proceedings of agriculture and manufactures. For the second purpose, he proposes to check the tendency to systematic economy, which he thinks the great enemy of

consumption, by a tax on accumulated capital;—the amount to be ascertained by requiring from every capitalist a declaration of his fortune, any concealment to be punished by confiscation. Such a tax he thinks would prevent the parsimony which dries up the channels of circulation.

He further proposes to establish in every department a bank, to be managed by landholders, of which the capital should consist of land, and which should issue notes to a corresponding amount; and also insurance companies, to secure the punctual payment of rents, and relieve landholders from the temptation to provide, by annual savings, against irregularity of income—such savings being, in M. Berryer's opinion, unfavourable to circulation.

He thinks that eighty-three new peers ought to be created, one for each department; that their dignity should be hereditary, and that its transmission to an unfit person should be prevented by an examination, from time to time, into the moral and intellectual qualities of each successor.

He thinks that the tendency in man to better his condition and to change his residence should be repressed. He proposes that no one should be allowed to exempt himself from military service (the great oppression of France) by finding a substitute, unless he can prove that he has always resided under his father's roof, and that it is probable that he will continue to do so; and that no one shall be allowed to serve as a substitute, unless he can show that he has always resided in the parish where he

was born. Further, that those who have changed their residences shall be subjected to increased taxation, and that no one shall be eligible to any local office if he have quitted his birthplace.

He ventures to insinuate a regret at the complete abolition of *lettres de cachet*, and, as a substitute, proposes to give parents and guardians power over children and wards until the age of twenty-five.

He proposes to create courts of equity, with criminal and civil jurisdiction, for the purpose of punishing offences not cognisable by the existing law, and forcing people to be liberal and grateful. 'Since religion and morality,' says he, 'have lost their power, they must be supplied by legal coercion.'

Such views, in so eminent a member of the French bar, explain Bonaparte's contempt of advocates.

The work is written in an easy, but rather careless style; and to the inconvenience of a foreign reader, is full of unexplained technical terms. The great fault of the short narratives of which it is mainly composed, is a perplexed arrangement of facts. To make our extracts intelligible, we have often been forced to transpose them.

TRONSON DU COUDRAY.*

[EDINBURGH REVIEW, April 1852.]

THE work, of which we have prefixed the title to this article, is one of an intended series which was interrupted by the revolution of 1848. We have not been able to find more of it than these two volumes; and we believe that no more has been published. They form, however, a complete work, containing the life and remains of a man who was one of the most distinguished members of the French bar during one of its most brilliant periods, and one of the most able and intrepid of the statesmen who, after the bar was silenced, sacrificed their lives in the attempt to erect a stable government out of the ruins left by the Convention. We believe that a short notice of it may be interesting, both as illustrating the remarkable social state which preceded, and in fact brought on, the great French Revolution, and also as throwing light on the military revolution of the 18th Fructidor, which, next to that of 1789, has been the event which has most affected the fortunes of France and of Europe — a revolution which deprived France of the glorious peace which

* Nouvelles Causes Célèbres. Recueillis et mis en ordre par M. le Comte de Marcourt. Paris: 1846.

Pitt was eagerly offering to her, which led her to play double or quits with fortune, until the unlucky throw, sure to come at last, stripped her of the winnings of twenty years of successful war, and which, during the fifty-six following years, has always placed her sceptre in the hands which know best how to use the sword.

Tronson du Coudray was born at Rheims, on the 18th of November, 1750. His family belonged to the noblesse of the town; a class which the facilities of locomotion, the preponderance of Paris, and a growing contempt for provincial illustration, and indeed for provincial life, have now nearly extinguished in France, as they have in England; but which, a century ago, constituted in every city a respected aristocracy, with a public spirit and a public opinion of its own. He was one of ten children, and the means of his family would not have enabled him to receive more than a very narrow education; but the talents which he displayed as a boy attracted general notice, and the city of Rheims supplied the funds necessary to carry him through the University. His favourite study was the law, then a necessary part of a liberal education; not, indeed, the municipal law of France (for among the heterogeneous ill-assimilated provinces into which France was then divided, there was no general law of France, any more than in England there is a general law of copyholds), but the great magazine of jurisprudential experience, skill, and philosophy — the Roman Civil Law. His exertions injured his health, and he was advised to try a total change of scenes and pursuits. He connected himself with a

commercial firm in Rheims, and travelled on the business of the House through Germany, Poland, and Russia. His health was restored, but on his return he found himself engaged in a lawsuit with his partners. This decided the course of his future life. He pleaded his own cause, and his success made him resolve to make the law his profession. At the age of twenty-eight, in 1778, four years after the accession of Louis XVI., in the same year with M. Berryer, he was received as *avocat* in Paris, and began his short but illustrious career.

The system of criminal procedure which then prevailed in France, as it still does in the greater part of Europe, is one which in England is adopted merely as preparatory to trial. It is called, by foreign jurists, the process by enquiry, to distinguish it from that which we adopt, which they call the process by accusation. Under the latter system the sovereign, on the complaint of an individual, brings forward and supports a specific accusation, against which the accused defends himself: a time is appointed for the decision, at which all the evidence on each side must be ready. If at the trial any link is wanting in the prosecutor's chain of evidence, so much the worse for justice; if one is wanted on the part of the prisoner, so much the worse for innocence. When once the curtain has been raised the play must be played out. The witnesses are bound to remain in attendance, the jury are kept from their homes, the court sits on from hour to hour, or, if necessary, from day to day, until the verdict has been pronounced. But the process by enquiry, as is the case with

us with respect to the preliminary proceedings before the committing magistrate, is not confined within any fixed period. The question which the court has to decide is not whether a prosecutor has proved that a specified person has committed a specified offence, but whether any and what offence has been committed, and who has committed it.

The enquiry, therefore, is at first ex parte. If a plausible case is made out against an individual he is arrested, imprisoned, and examined; his own examinations being expected to afford or to indicate the best evidence against him. When all the criminatory proof has been collected, it is communicated to the prisoner, who now, perhaps for the first time, knows the nature of the charge, and for the first time has legal assistance. As justice has not hurried herself in collecting the evidence against him, she does not hurry him in preparing his defence. No time is fixed for the termination of the proceedings. They are to end as soon as the court is convinced of his innocence or of his guilt. Further proofs on either side may be adduced at what appeared to be the last moment. An *accusation* is a drama, in which all the unities, action, time, and place, are preserved. An *enquiry* resembles a novel, in which event succeeds event, and the story wanders on from year to year.*

The first important cause in which Tronson du Coudray was engaged was a remarkable one.

* I have described the Process by Enquiry at more length in the paper on Feuerbach.

On the 1st of August, 1773, a horseman, who was approaching Peronne, found on the high road a boy, about eleven years old, covered only by half-consumed rags, attenuated by want and fatigue, and uttering inarticulate cries. The traveller took his new acquaintance with him to Peronne, set before him food, which he devoured with a voracity which showed that he had long endured hunger, and endeavoured to learn his history. This, however, he found impossible, for the boy was deaf and dumb. A charitable woman took charge of him for some weeks, at the end of which, through the intervention of M. de Sartine, the well-known minister of Police, he was placed on the 2nd of September in the Bicêtre, then used as an asylum for foundlings. Food and rest restored his bodily health, but he shrank from the contact of the boys among whom he was thrown. They belonged—most of them by birth, all of them by education—to the lower orders. His appearance, and, as far as his infirmities permitted it, his manners, were aristocratic. He had the quick intelligent look which often animates the countenances of those who derive knowledge only through their eyes, and the docility and refinement which are the results of early cultivation. He was of course oppressed and persecuted by his vulgar companions; his spirits, and at last his health, failed; and after remaining twenty-two months in the Bicêtre, he was removed to the Hôtel Dieu of Paris.

The Abbé de l'Epée, always in search of objects whom, by means of the wonderful system of signs of which he was the inventor, he could enable to communicate with their

fellow-creatures, found the deaf and dumb boy at the Hôtel Dieu, removed him to his own house, and in a few months rendered him capable of telling something about himself. The story, which Joseph (that was the name given to him by the Abbé) related, was, that he remembered having lived with his father and mother and sister in a fine house with a large garden, and that he used to ride in a carriage and on horseback; that his father was tall, his face marked by wounds received in battle; that he died, and that his mother and sister, as well as himself, wore mourning; that he was taken from home by a man on horseback, that his clothes were changed for rags, and that he was turned loose in a wood, wandered for some days until he reached the high road, and then passed through the adventures which we have related.

Joseph's story, which bears a wonderful similarity to that related by Caspar Hauser, sixty years afterwards, excited deep interest. It was frequently told by the Abbé in the sort of lectures which he gave to those who visited his establishment; and both the speaker and the audience indulged in conjectures as to what the great family might be of which Joseph was probably the representative. A lady who was present on one of these occasions, apparently in the beginning of the year 1777, mentioned that in the autumn of 1773, a deaf and dumb boy, the only son of Count Solar, the head of the ancient house of Solar, which has produced several knights celebrated in the history of the Order of Malta, had left Toulouse, where his father and mother then resided, and had never returned. He was said

to have died soon after. It was suggested that this was Joseph. Enquiries were made at Toulouse, and the suggestion became plausible. The family of the Count had consisted of two children, a boy and a girl, the boy born in the year 1761, and deaf and dumb. The father had died in the beginning of 1773, and the mother had sent her son from Toulouse to Bagneres de Bigorre, under the care of a young lawyer named Cazeaux. In the beginning of the next year Cazeaux had returned, but not the boy; he was said to have died in January, 1774, of small pox. The mother died in 1775.

The Abbé de l'Epée took up the cause of his pupil with the enthusiasm which belonged to his character. He believed that in what had passed he could trace the hand of Providence. Young Solar's mother, he maintained, either to escape from the burden of an imperfect child, or to secure for herself or for her daughter his inheritance, had given him to Cazeaux to be exposed. To conceal the crime he had been taken 600 miles off, to Peronne, and abandoned to what appeared certain destruction in a wood. But the eye of God was watching. A traveller was sent to rescue him, a woman to receive him, the Abbé himself to instruct him; and now able for the first time to tell his story, he asked for restoration to the honours of his house, and for the punishment of Cazeaux, the only surviving actor in the crime.

The Duc de Penthievre, a prince of the blood, was among those whom the Abbé interested for his protégé. He provided munificently for Joseph's support, and sup-

plied funds for the expensive legal proceedings necessary to establish him as Count Solar.

The boy was taken to Clermont, the birthplace of the Countess Solar, where she and her son had lived during the first four years of his life. It was not to be expected that those who had known him only when four years old would recognise him at seventeen. Some recognition, however, there was: Madame de Solar's father was still living; he fancied that Joseph resembled his grandson, and, what he thought more important, he felt for him an affection which must be instinctive. The Countess's brother believed Joseph to be his nephew, because he had the round shoulders and large knees of the Count. The woman who kept the school at Clermont, at which the young Count had been placed, her daughter, and two servants, also perceived a resemblance. It was recollected, too, that the young Count had on his back a mole in the shape of a lentil; a similar mole was found, or thought to be found, on the back of Joseph.

It appears that Joseph possessed considerable natural talents, and that his deafness was not complete. He soon ascertained the nature of the claim which was made on his behalf, and endeavoured to promote it. He had sufficient self-command to feign perfect insensibility to sound, and sufficient acuteness to make out something of the conversations which passed before him. He learned some facts connected with the Solar family, and reproduced them; and thus a considerable body of evidence of his identity was collected. The evidence, however, on the

other side was strong. Many persons belonging to Toulouse, who had been intimate with the young Count, denied even his resemblance to Joseph; and, what seemed to be almost decisive, the young Countess Solar did not recognise Joseph as her brother, nor did he know her to be his sister. Each treated the other as a stranger. The identity, therefore, of Joseph and the young Count sank from a probability to a possibility—a possibility which must vanish altogether, if the death of the latter could be established.

The Abbé de l'Épée, however, and the public, had taken up Joseph's cause with the inconsiderate vehemence to which the French are subject. He claimed, before the Cour du Châtelet, in Paris, the name and honours of Count Solar; and the first step taken by the court was to order the arrest of Cazeaux, and his prosecution as the abductor and exposer of Joseph. Cazeaux was defended by Tronson du Coudray.

As a specimen of Tronson du Coudray's powers, we extract his statement of the mode in which the arrest was made. It must be recollected that he was then a young advocate making his first important speech.

'At mid-day the officers of justice, accompanied by a furious mob, seized M. Cazeaux, dragged him through the streets of Toulouse to the Hôtel de Ville, where they threw him into a horrible dungeon, called La Miséricorde, to wait among condemned felons for the departure of the cart which was to carry him to Paris. The next day, and again at noon, both hands and feet in irons, he was thrown

into it, and thus set out on a journey of five hundred miles. While they were in motion he was chained to the cart; when they halted he was chained to the inn table; at night he was chained to his bed. "At every village," he has often said to me in our consultations, "the inhabitants crowded round the carriage, and speculated on my crimes." "He is a highwayman, said some." "He is a murderer," said others. "He is to be broken on the wheel." "No, he is to be burned, look at his chains." And I could not close my ears or hide my face." Painful as this picture is, I must dwell on it for an instant. For seventeen days this innocent man (for innocent he is—I shall prove it even to demonstration) was exposed to fresh witnesses of his dishonour. For seventeen days he read in hundreds of eyes the horror and the disgust which his presence inspired. For seventeen days he heard repeated at every stage prophecies of his infamous execution. Though his conscience told him that he was innocent, a hundred voices proclaimed his guilt. "I am innocent," he repeated. "Nonsense," they replied, "look at your chains." And he could not close his ears or hide his face. Ah, Messieurs, if I could allow myself to admit the supposition that he is guilty, his guilt has been atoned for. The sufferings of seventeen days such as those avenge society.

'Let another scene of this tragedy pass before us. The ignominious journey at length came to an end. M. Cazeaux reached Paris; he was taken from his cart and thrown into one of the vaults of the Grand Châtelet. Thence he was transferred to a still lower dungeon, without light or

air, and kept for six days without examination. For six days—and the law says that every prisoner shall be examined within twenty-four hours—for six days my unhappy client was left in darkness and in solitude to brood over the cruelties which he had suffered, and to imagine those which he had to undergo. If the past indicates the future, what is the amount of the oppression that is reserved for him?'*

Tronson du Coudray then proceeded to prove, by the depositions of a host of witnesses, that the day on which the young Count left Toulouse, under the care of Cazeaux, was the 4th of September, 1773. It was on the 1st of August, in the same year, that Joseph was found in the wood near Peronne. From these respective dates he traced the contemporary history of the two youths: showed that in November 1773 Count Solar was at Bagneres, and Joseph at the Bicêtre; and, finally, that on the 28th of January, 1774, Count Solar died at Charlas, near Bagneres, of small pox, having survived his father about a year.

Cazeaux was of course acquitted; but the veil was never removed from the early history of Joseph. That he was the son of a man of fortune and rank, that during his father's life he was treated with kindness, and that when his father died his mother sacrificed him to family pride or cupidity, are facts which there seems no reason to doubt. It is scarcely possible that he could have invented them. And the circumstance that such a

* Vol. i. pp. 40, 41, 42.

sacrifice could be made without detection, throws some light on the state of French society before the Revolution. A frightful mystery must have been confided for many years to many persons; persons not selected as peculiarly fit to be its depositaries, but the ordinary domestics of a great family. Yet so strong was the feudal principle of loyalty by which they were bound to keep the secrets of the house in which they served, that not a whisper ever revealed the domestic tragedy in which many must have been actors and many more spectators. If such events were to take place now in France, if the deaf and dumb child of opulent parents were exposed by his family, and were rescued by accident, and public curiosity were seeking out his relations, not a month would pass before some accomplice or some confidant would supply a clue by which they would be ascertained. The strong domestic discipline of the eighteenth century suppressed all indication.

Another set of events, distinguishing those times from ours, is the treatment of Cazeaux. We have extracted Tronson du Coudray's description of his violent arrest, and of his ignominious transportation to Paris. The subsequent proceedings in the enquiry were of a piece with its atrocious beginning. For twenty-two days he was left in a dungeon, unlighted and unventilated, with no intercourse with mankind, except six examinations, each of which — such was then the pace at which justice advanced in France—lasted eight hours. The intercession of the Archbishop of Toulouse procured for him a more tolerable

prison, and legal assistance. He asked to be admitted to bail. It was refused. He demanded that Joseph should be taken to Toulouse, to Bagneres de Bigorre, and to Charlas, the last places in which Count Solar had been known, and staked his life on the result. If Joseph was there recognised as the Count he would make no further defence.

It is obvious to us, and must have been obvious to the judges of Cazeaux, that this experiment would have been decisive. If Joseph was the Count Solar, a thousand witnesses were there to proclaim it; if he was not, there were there a thousand witnesses to deny it. This again was refused.

'On what grounds?' asked Tronson du Coudray. 'A reason has been given, but one which this court would not have conjectured — one which it can scarcely believe — but I must report it as I received it. The ground is, that the expense would be too great. This is the answer to the cries of an innocent man in his despair. This is the sort of excuse which keeps our prisons full. The expense! when the questions at issue are the rank and fortune of one citizen and the honour and life of another. The expense! when an impostor is to be exposed or a murderer to be punished. The expense! as if the most sacred debt owed by the Crown were not the protection of its subjects.' *

For eleven months Cazeaux was detained in the prisons of the Châtelet of Paris, uncondemned, unacquitted. All

* Vol. i. p. 84.

his little fortune was wasted, his practice destroyed, and his health ruined. And if he had not appealed to the Parlement of Rouen, there seems no reason for fixing any term at which the enquiry would have terminated. How are this cruel rigour and indifference to be accounted for? It does not appear that the judges of the Châtelet had any personal quarrel with M. Cazeaux. It does not appear that until they ordered his arrest they had ever heard of him. He was an obscure provincial lawyer, whose name had never reached the capital.

We believe that it was to this very obscurity that he owed his sufferings. He was a *roturier*, and he was accused of having injured a noble. The Court cared no more about his feelings, or his sufferings, or his ruin, than a Bramin cares about the fortunes of a Pariah, or a Boer about those of a Hottentot. He belonged to a caste for whom those who then governed France had no fellow-feeling. One cannot wonder that when the millions of whom that caste was composed suddenly passed from abject weakness and contempt to absolute power, they felt no sympathy for those from whom they had received none, and looked with indifference, or in many instances with pleasure, on the exile, the ruin, and even the judicial murder of those who were known to them only as insolent superiors.

Our readers may perhaps be interested by the actors in this remarkable drama sufficiently to wish to know their subsequent history. Joseph, admitted to be probably an injured gentleman, though certainly not Count Solar, en-

tered the army and was killed early in the revolutionary war. A M. Avril, a rich old bachelor, a judge in the Châtelet, who had taken an active part in the proceedings against Cazeaux, sought his acquaintance after his acquittal, and made him a splendid amends by bequeathing to him a considerable fortune. The Revolution came, and for a time diminished the prejudices of caste. The Countess Solar was poor. Cazeaux had become rich. They married, fixed themselves at Mandres, near Brunoy, a few leagues from Paris, on a part of the property inherited from Avril, and lived there through the Revolution, the Consulate, the Empire, and the Restoration. M. Cazeaux died in 1831; his wife in 1835. It is a proof of the degree in which manners have degenerated in France, that M. Cazeaux, a provincial and a *roturier*, was considered in his old age a model of elegance. The only drawback on the tranquil happiness of his later life was that more than once a dramatic or a melo-dramatic writer took Joseph, or the Abbé de l'Epée, for his hero, and turned Cazeaux into a hired assassin. Cazeaux had to write and to explain; and there is always some degradation in having to confess that one has been treated as a malefactor, and in having to prove that the treatment was not deserved.

We proceed to a trial of a very different kind—to a comedy rather than a tragedy.

At the time of which we are writing, one of the principal employments of the Courts was to decide on demands made by wives for a formal separation from their husbands.

Such a separation was decreed, on proof that the hus-

band had either treated his wife with cruelty or had defamed her character. On both these grounds the Marchioness Soyecourt demanded a separation from her husband, the Marquis. We shall not dwell on the evidence by which she supported these charges, or on the arguments by which Tronson du Coudray refuted them. The interest of the cause lies in the relative situation of the parties, and in the insight which their ante-nuptial arrangements, and their post-nuptial conduct, give us into the habits and feelings of the aristocracy of the *ancien régime.*

The Marquis de Soyecourt had lost two wives, when he proposed to marry the Princess Nassau-Saarbruck. She had little fortune, and was no longer young; but her rank was high, and this seems to have attracted the Marquis. He was also a man of high birth, though not equal to hers, and he had a large fortune. By the marriage settlement the Marquis engaged to allow his wife 400*l.* a year pin-money; to keep for her exclusive use a coach and six, three footmen, two ladies-maids, and a postillion, all to be selected by herself; and, if she required it, to give her a *dame d'honneur.*

On these terms the marriage took place in July 1783, and they immediately took possession of the Marquis's country house Tilloloy, in Picardy. A large party had been assembled in the house by the Marquis eight days before the marriage, and remained there till the family moved to Paris in December. Open house was kept for the neighbours, so that Tilloloy, for five months, was a

scene of constant fête. The same sort of life was continued at Paris, and if gaiety and dissipation were the Marchioness's objects she enjoyed them in perfection. It is characteristic of the manners of the times that Du Coudray, among his praises of the Marquis's marital conduct, dwells on his having every morning paid his wife a visit in her apartment to enquire after her health.

We have mentioned the clause in the settlement which gave the lady a household of her own. Her servants abused their independence with the insolence of uneducated persons. They neglected the orders of the Marquis, they refused to perform for him any services, to announce, for instance, his visitors, or to serve him at table, and they were supported by their mistress. He defended himself by dismissing two women who were the most offensive. The Marchioness instantly quitted his house and made a legal demand for separation, and for alimony, which she fixed at 4,000*l.* a year, being about half of his whole income. Her grounds of complaint were, that he had dismissed her servants, which she termed cruelty, and that he had declared that her child was not his, which, with more reason, she called defamation. Immediately afterwards the Marquis was committed to the Bastile on a *lettre de cachet.* This was in 1786. A *lettre de cachet* was not then a thing to be freely discussed. The Marquis was not informed on what grounds, or on whose solicitation, this was issued: he was told, however, that if he would arrange matters with his wife it would be recalled.

He refused to submit, and after some months' imprisonment was released, but exiled to Tilloloy. Tronson du Coudray complains bitterly that this exile prevented his calling personally on his judges, and informing them of the merits of his cause. For, according to a practice which then prevailed over nearly the whole of the continent, and now exists in many parts of it, particularly in Italy, the parties in a cause visited separately their judges, and each told his own story in private. What was the ultimate result of the Marchioness's complaint does not appear. We have only Tronson du Coudray's pleading. Though delivered scarcely more than sixty years ago, it implies a state of habits and feelings which seem to be separated by centuries from those of modern France.

The longest and perhaps the most important argument in this collection is that which Tronson du Coudray delivered in the end of 1788, before the Parliament of Rouen, on behalf of the Sieur Thibault against M. Froudière.

Two brothers named Thibault, rich old bachelors, lived together at Paris in 1786, with a small household, in which one Marie Clereaux was a housemaid. They suspected her honesty, examined her trunks, found there some handkerchiefs belonging to one of the brothers, and five hundred francs, the possession of which she could not account for, and which they therefore assumed to be the produce of former thefts. They immediately dismissed her, retaining the five hundred francs, but took no further proceedings. A few days after she came to them, accompanied by a

commissaire de police, and demanded from them the money, and a certificate of good conduct. They refused both, assigning as the grounds of their refusal the facts which we have related. She admitted that the handkerchiefs had been found in her box, but maintained that they had been placed there by the Thibaults, and required them either to give up to her the money or to indict her for theft. They were of course forced to accept the challenge, and prosecuted her before the Court of the Bailliage. She was condemned, and appealed to the Parlement of Rouen. In this appeal her counsel was M. Froudière.

The French press was then subject to a censorship, from which legal papers, signed by advocates, were alone exempted. The inhabitants of a great capital delight in gossip and scandal, which were abundantly supplied by the proceedings of the courts of law. They formed the favourite literature of the time. Our readers must recollect the pleadings of Beaumarchais, and the avidity with which all Paris devoured his *requêtes* and his *repliques* in matters which might have been supposed to possess no public interest. M. Froudière signed, printed, and distributed on the behalf of Marie Clereaux, a *requête*, in which her former defence, that the handkerchiefs had been placed by the Thibaults in her box, was repeated. It seems now, however, to have occurred to her, or to her counsel, that it was necessary to assign a motive for such conduct, and to show what could have induced two men of fortune and station to conspire for the purpose of imputing

to their own servant a capital crime. The motive assigned in the *requête* was that Marie Clereaux had become the involuntary depositary of a frightful secret.

'A few nights,' she said, 'before the day on which my boxes were searched, and the handkerchiefs were found in them, I was awakened by the cries of a woman. I thought that I recognised the voice of my fellow-servant, Marie-Anne Delaunay. They continued for some time. I became too uneasy to stay in bed, got up, and groped my way in the dark towards the room from which they seemed to issue. It was that of the younger M. Thibault, which stands at the end of a passage, detached from the rest of the house. As I reached the passage the cries of the woman were mingled with those of a child. I was alarmed, and went back; they became more violent, and I went again towards the room; there was a strong light, like that of a large fire, under the door. I knocked, and called, but the door was kept shut, and Thibault cried from within that nothing was the matter, and desired me to go back to my room. I stayed some time before the door, during which I heard nothing but the suppressed sobs of the woman, and from time to time the low wailing of the child. I knocked again, and was fiercely and peremptorily ordered away, if I valued my life. I did not venture to remain at the door, but lingered at the end of the passage. Suddenly I heard a frightful shriek, succeeded by perfect silence. I ran back to my bed, and passed the rest of the night thinking over the horrors that I had heard. The next day, and, indeed, until I was turned away, M. Thi-

bault's room was kept locked. Neither he nor Marie-Anne Delaunay would give me any explanation. They merely answered my enquiries by saying that nothing had happened, and that it would be better for me if I minded my own affairs. I never again heard the voice of the child. What became of it is known only to the Thibaults and Marie-Anne Delaunay. I was not wise enough to follow their advice; from time to time I alluded to what had passed. I was caught once trying to enter M. Thibault's room. The next day, on returning from a message on which I had been sent, I found my boxes broken open. I was told that property of my masters had been found in them. I was discharged without a character, was robbed of the little money that I had saved, and when I asked for reparation I was prosecuted for theft.'

The libel ran like wildfire through the excitable population of Paris. It was just on the eve of the Revolution. The press took up the cause of poverty against aristocratic fraud and cruelty. Nothing was too monstrous to be believed when two rich men were accused by a servant girl. The skill with which the dreadful story was rather hinted at than told, the veil thrown over its catastrophe, yet raised enough to show what it must have been, the credibility given to the whole by the official signature of the advocate, seem to have blinded everyone to its original improbability and to its defective proof. A furious mob attacked the house of the Thibaults, and were not driven away by the troops till they had broken through its doors and

thrown torches into the sitting-rooms. The two brothers fled from house to house, pursued everywhere by imprecations as the burners of the child. The elder Thibault, a man of seventy, ventured to walk in the Cour Dauphin. A crowd soon collected; he hurried back, slipped, and fell; they rushed on him, and trampled him under foot; and though he was saved by the police from being torn to pieces on the spot, he died in three days of the injuries which he then received. A furious mob interrupted his funeral, threw the coffin on the ground, and endeavoured to exclude it from the church. A sister died broken-hearted a few days afterwards. The surviving brother, after one or two narrow escapes from the mob, protected himself by concealment. The proceedings of the court before which Marie Clereaux's appeal was tried, were disturbed by the vociferations of the spectators, and more than once suspended. And we cannot avoid suspecting that it was under this pressure from without that the judges gave their decision, if decision it can be called. They ordered her release, without either acquitting her or finding her guilty.

M. Thibault proceeded against Froudière before the Parlement de Rouen, as responsible for the libel. Tronson du Coudray's argument for the plaintiff consists of six distinct speeches; the first five containing the attack, the sixth the reply. They are now published from a copy corrected by the author.

The first tells in detail the story of which we have given the outline. In the second and third, Du Coudray meets

Froudière's excuse, that the *requête* was a necessary part of Marie Clereaux's defence. The statements contained in the *requête* were a part of the defence only so far as they were true, and Froudière, a practised advocate, accustomed all his life to sift evidence, must have seen at once that they were false. They rested on the bare assertion of Marie Clereaux, not merely unsupported by any other testimony, but opposed by a vast body of negative evidence. No one had ever heard of the existence of the child whose murder was the foundation of her story. No one had ever suspected any female in the house of pregnancy. The two Thibaults, whom she accused of this combination of frightful crimes, had each passed a long life with unimpeached reputation. On her first trial she had merely affirmed that the handkerchiefs had been placed by the Thibaults in her box, but had not suggested any motive for such wickedness. It was only on the appeal, after Froudière became her counsel, and not early even in that proceeding, that the murder of the child was brought forward. It was the duty of Froudière at once to tell his client that he would not be a party to the propagation of such a calumny, instead of becoming her active accomplice.

'Your guilt,' said Tronson du Coudray, addressing his adversary, 'is a hundred times deeper than that of your client. The calumnies of Marie Clereaux were buried among the manuscripts of the pleadings; yours were scattered by the press over all Paris. Marie Clereaux was a poor wretch, without morals or shame, whose testimony carried no weight; you are an advocate, a man of talent and

knowledge; all that you authenticate is believed. When Marie Clereaux was interrogated she betrayed herself by the extravagance of her answers; you covered her absurdities with the skill of an experienced pleader. Marie Clereaux had mere audacity; you employed eloquence, imagination, sarcasm, and philosophy. Marie Clereaux, with all her evil intentions, addressing only her judges, was impotent; you, appealing to the public, have destroyed the lives of some of your victims and the happiness of all.

'You ask what interest you had in attacking M. Thibault? This was your interest. You wished for celebrity, you wished to create an effect, you wished to be talked of. An honourable advocate may have these weaknesses, but his self-love is tempered by his feeling of propriety. He refuses to obtain notoriety by calumny; he repels the suggestions of vanity; he is ashamed of having allowed them even to soil his mind. An unscrupulous man delights to show his powers of sarcasm and invective. He delights in being feared as well as praised, in inspiring at the same instant terror and admiration. Habitual indulgence in these passions produces the hateful state of mind to which we give the name of *malignity*; a state of mind in which, if the first object is to do good to oneself, the second is to do harm to others.

'You say that you did not hate M. Thibault. Certainly you did not, for, I believe, that until you were Marie Clereaux's counsel you had never heard his name. But your mind was filled with a much worse passion than

hatred of an individual. You had no special wish to injure M. Thibault, but you had a general determination to injure everyone who stood in your path — everyone by injuring whom you could advance yourself. This is the circumstance which interests the public in this cause. This is the circumstance which makes your example dangerous.

'You do not hate M. Thibault; it would be a hundred times better if you did. It would be a single fact, disgraceful, criminal, but not alarming. The only inference would be, that it is dangerous to incur your enmity. But that without any feeling of hatred, of resentment, or even of jealousy, merely because it happened to suit you so to do, you covered an innocent stranger with opprobrium; this is enough to spread terror all around you. It is possible to avoid incurring your hatred. There is no mode of protecting oneself from your malignity.' *

'And here,' said Du Coudray, at the end of the third speech, 'I might sit down. I have proved, by the clearest evidence, that you have aided in disseminating atrocious calumnies. But you answer, "The evidence is not to be trusted; at least, the inference of my opponent is not to be drawn from it. It is impossible that a man of my station and character could knowingly have been an accomplice in a calumny. I believed Marie Clereaux's statements to be true. I now believe them to be true. If they are false, it is my error, not my fault." To this answer of yours I have a reply which my compassion for you scarcely allows me to utter. Ten times during the pleadings I have thought

* Vol. i. pp. 329, 403.

of suppressing it, but you have made it necessary to my cause, and it must come out.

'This is a dreadful moment for you, M. Froudière, probably the most terrible that you will ever undergo. You are in the presence of the judges to whom you owe an account of your whole conduct, and never more so than now. You are in the presence of the whole order to which you belong; you have summoned it to hear your justification. You are in the presence of an audience as large as this vast hall can contain, belonging to every class of society, but all uniting in their hatred of falsehood and treachery. Here is no room for subterfuge, for equivocation, for sophistry, or even for palliation. You will have to give me a clear, a precise, and a convincing answer, or to surrender for ever all claim to public esteem. As for myself, I think no more of the interests of my client, I rely no longer on the privileges of my profession; I shall speak with the moderation, with the impartiality, and, I trust, with the candour of a bystander or a witness. You shall not reproach me with exaggerating a word or a look.

'These, then, M. Froudière, are the facts which have been your secret terror during the whole of this long enquiry; the facts which you have endeavoured to conceal by chicanery, by intimidation, and by corruption—facts whose overwhelming weight is increased by their certainty, by their being proved, not by testimony or by inference, but by record.

'Up to the present time I have argued on the supposition that Marie Clereaux had no accomplice in her calumnies,

that your crime was that of an instrument. I thought it right to demonstrate, that even on that supposition you are inexcusable. I now change the line of my argument. I now maintain —and the frightful story which I have to relate will prove that I am right — I now maintain that, whether the inventor or not of the calumny (I leave this in doubt, because it is not demonstrably in proof), you were at the very least an active assistant in its production; that you developed and fashioned her falsehoods, even if you did not originally suggest them.

'You have pleaded in the name of Marie Clereaux, that M. Thibault was the father of a child by Marie-Anne Delaunay, and destroyed that child. You have pleaded in the name of Marie Clereaux that M. Thibault conspired her death, in order to get rid of a witness of his crimes. You have boasted that your pleadings in Marie Clereaux's case were intended, not so much for the judges as for the public.

'Well, I affirm—and the records of a court of justice will prove it to be true—that you, M. Froudière, have already been convicted of having, in an action in which a priest, your clergyman and benefactor, was concerned, introduced falsely into the pleadings precisely the same calumnies and nearly in the same words.

'I affirm that you were convicted of having falsely asserted that this priest had had a child by his servant, and had destroyed it.

'I affirm that you were convicted of having falsely asserted that this priest had endeavoured to poison one of his parishioners.

'I affirm that you were convicted of having falsely asserted that his object was to get rid of a witness of his crimes.

'And I affirm that you boasted that your pleadings should be read by all the shepherds of the country.'*

The effect of this denunciation was, of course, terrible. After a short pause the Advocate-General rose, and addressing the court, said, 'We are filled with horror! M. Tronson du Coudray's story is frightful. I tremble like everyone else. A great criminal is before us. If M. Thibault has instructed his counsel to state facts that cannot be proved, his whole fortune will not pay the damages to which M. Froudière will be entitled. If these facts can be proved, M. Froudière is a monster, from whom society ought to be delivered.'†

The records of the trial to which Du Coudray referred, were in the Provincial Court of Bernay. The Parlement ordered their production. They fully supported Du Coudray's opening. It appeared that, twelve years before, in 1776, M. Froudière, having quarrelled with l'Abbé de Boisgruel, the curé of his parish, had accused him of precisely the same crimes as those which the *requête* of Marie Clereaux imputed to M. Thibault, had been prosecuted by him for scandal, and had been forced to pay a large sum as damages, and to retract the charge in the face of the congregation.

The principal trial was never terminated: the Revolution swept away the plaintiff, the defendant, and the court.

* Vol. i. p. 374. † Vol. i. p. 371.

All that remains of it are six speeches, which are among the most remarkable specimens of the eloquence of the illustrious bar of France.

The last of Tronson du Coudray's legal pleadings to which we shall call the reader's attention, carries us still farther on to the Revolution. It is the *mémoire* for the Sieur Reveillon. Reveillon was the son of humble parents: while a child he was apprenticed to a paper maker, and in 1743, when he was fifteen, the failure of his master threw him on the world. He had no money, and for some days could procure no employment, and he was dying, as, in a country without poor laws, a man may die, of cold and hunger, when a lad of his own age and condition saved him by pledging his tools, and raising a sum sufficient to support him till he found work in his trade. His progress was slow. In 1752, after nine years' service as journeyman, he had saved only eighteen francs. With this capital he began the trade of a paper merchant, and in ten years so far increased it as to be able to become a paper maker.

Now, however, his difficulties began. He was an inventor; he deviated from the narrow line and routine processes of his trade. He became, of course, an object of jealousy both to the paper makers, whose productions he surpassed, and to other classes of tradesmen, for whose commodities his inventions might become substitutes. In France every manufacture was then a corporation, with its own privileges, its own bye-laws, and its own monopolies. Some corporation claimed the exclusive right to every new

tool which he employed. Every new process which he used, every new article which he offered for sale, was the property of the engravers, or the tapestry weavers, or the printers, or the embroiderers. Actions were commenced against him which would have ruined him by their costs, even if he had succeeded in defeating every one of them.

The remedy to which he had recourse is characteristic of the times: he obtained permission to entitle his establishment 'Manufacture Royale.' Immediately all legal persecution was at an end. An establishment supposed to be conducted by the King might of course employ what tools and processes, and make and sell what wares the royal manufacturer thought fit. Under the protection of this title, Reveillon became one of the great manufacturers of France. His plant and workshops covered five acres in the Faubourg St. Antoine. He paid more than 200,000 livres a year in wages, which, considering the value of money at that time in Paris, was equal to 20,000*l.* a year in London now. A painter of eminence, who received 10,000 livres a year, superintended the designs of the painted papers: under him were four artists, all of considerable merit. The whole number of persons whose support, directly or indirectly, depended on Reveillon's manufactory, must have amounted to thousands. During the memorable winter of 1788, the severity of the frost for some weeks stopped the works; he continued to pay the same wages as before.

The jealousy, however, of his rivals was not extinct. They whispered about in the Faubourg St. Antoine, that

Reveillon was the friend of the noblesse; that he was looking out for the cordon of St. Michael; and, at last, that he had said, that fifteen sous a day were wages enough for a workman. Such was then the state of mind in the Faubourg St. Antoine, that on the 12th of June, 1789, without warning, without explanation, a ferocious mob marched on Reveillon's premises, with a declared intention of burning them down and murdering the proprietor. Happily for him he was then at the archbishop's, exercising his privilege of voting. A body of national guards were drawn up in the first court yard: the rioters after some parley retired, announcing their intention to return the next day, but in arms. At noon, the next day, they kept their engagement; a strong body of soldiers was present, but remained inactive. The mob broke through the gates, and lighted three great fires in the yards. Into these they threw everything that was consumable — furniture, pictures, books, including all those belonging to the trade, hangings, linen, and clothes. When all that would burn had been burnt, they broke to pieces the chandeliers and glasses, tore down the wainscoting and chimney-pieces, and stole all the money and plate. Having thus amused themselves for two hours, they at last thought fit to fire on the troops. And then, at last, the troops fired in return, and the mob, having leisurely and effectually done its work, retired.

We have refrained from extracting any of Tronson du Coudray's comments on this outrage, because he does not appear to have perceived its importance. All that he

dwells on, all that appears to have struck him, is the malignity of the authors of the imputation. The really formidable symptom was the effect of that imputation. The object which Colbert and his successors had been pursuing for a century, the object to which they had sacrificed the agriculture and commerce of France, was beginning to be attained. France was becoming a manufacturing nation. Paris was not, then, what unhappily it is now, a great manufacturing town, but it had a large manufacturing population. This is the population, the offspring of the French prohibitory commercial, or rather anti-commercial, system, which for sixty years has rendered unstable every form of French government, imperial, regal, oligarchical, and democratic, and at length has enabled an usurper to destroy liberty, on the pretence that it leads to anarchy. The facility with which the population of the Faubourg St. Antoine believed the absurd calumnies which Marie Clereaux cast on the Thibaults, and which his manufacturing rivals directed against Reveillon; the ferocity to which in both cases that belief impelled them — the subservience in the former case of a court of justice to the folly and violence of the mob; and the inactivity in the second case of the public force—were symptoms of the state of mind both in the people and in its rulers, which six weeks after showed themselves in the unpunished murder of the garrison of the Bastille, and three years afterwards in the paid massacres of September.

With the memoir for the Sieur Reveillon, the collection

of Tronson du Coudray's civil pleadings ends. This is much to be regretted, as we know that the period between the plunder of Reveillon's establishment in 1789, and Du Coudray's entrance into the legislative body in 1795, was the most brilliant portion of his forensic life. He was one of the few advocates whom the Reign of Terror did not silence; who ventured to defend those who were sent to undergo what was meant to be a mere form of trial before the ferocious judges and the sanguinary jury of the revolutionary tribunal. He dared to snatch victims from Dumas, Coffinhal, and Fouquier Tinville. He wrote to the Convention to offer himself as the defender of Louis XVI. The Convention not only refused the request, but excluded all mention of it from their journals. Du Coudray published his offer in every newspaper that dared to print it. 'If Louis,' he said, in his letter to the newspapers, 'had enjoyed a free choice of his counsel, I should not have ventured to propose myself. But when it became certain that Target had refused, and probable that Tronchet would do so too, it seemed to me frightful that such a prisoner should be deserted by all those whose profession it is to defend the unfortunate. I know my insufficiency; but as one of the oldest members of the bar, I feel it to be my duty, if there be any risk, to be among the first to encounter it.'

His services, however, were accepted by Marie Antoinette, a still more dangerous client; for Louis was only despised, and was put to death principally as a defiance of Prussia and Austria, and to gratify the national vanity by

showing that the democrats of France were as decided and as unprejudiced as those of England had been 150 years before. Marie Antoinette was hated and feared. Nothing can exceed the vigour and the boldness of his defence; and it was the more heroic, as he must have known its utter fruitlessness. Its only effect was to involve him in her danger. He was denounced, imprisoned, and in a few hours would have been on a *charette* on his way to the guillotine. He was saved, as no one else was saved, by a decree of the Convention ordering his release.

At length the Convention approached the end of its memorable reign. For three years it had exercised absolute power, legislative and executive: it had beaten down an almost general insurrection; it had waged successfully an almost general war; it had been more terrible to its subjects, to its enemies, and to its friends, than any government which modern Europe had then seen; and, while terrifying and crushing all around it, it had been more enslaved, more trampled on, frightened into more abject submission by its committees, than even was the case with the victims of its own oppression.

Those among its members who had survived the persecutions which had successively driven into exile, or to the scaffold, the Girondins, the Dantonists, the Hebertists, and the Terrorists, resolved to leave behind them a constitution which should render impossible the tyranny of either an individual or an assembly. For this purpose they enacted the constitution of 1795, or, as it was called in the jargon of that period, de l'An III. This constitution attempted

to realise the favourite theory of continental philosophers, the *total* separation of the legislative and executive powers. The members of the legislative body were incapable of any other functions. They were not to be ministers, they were not to be generals—in short, they were not to do anything but legislate. The Directory was to be a collective king, acting by its ministers. It made war, and peace, and treaties—it nominated to every office that was not elective—it did everything except make laws. As respects administration it was omnipotent; as respects legislation it was impotent. It had not even a suspensive veto. It could not dissolve, it could not even prorogue, the legislative body. Above both powers was the Constitution, to be altered only by a new constituent assembly summoned for that express purpose.

It is interesting to study the working of the constitution of 1795, for it corresponds in many important particulars with that of 1848. Each was the work of an assembly which itself had reigned despotically. Each was based on an incompatibility of executive and legislative functions. Each vested these powers in two distinct authorities, to neither of which it gave any means of controlling, or indeed of influencing, the other; and neither constitution supplied any machinery by which a difference of opinion between these two great authorities could be settled. Each constitution seemed to assume that its directory and its legislature, or its president and its assembly, would act together in perfect harmony, for neither appointed an umpire to decide their disputes.

In England the power of the Crown to dissolve Parliament supplies such an umpire. In case of a difference of opinion among the three branches of the legislature, or between any two and the third, Parliament is dissolved, and the great umpire—the people—is consulted. When that experiment was tried in 1784, a House of Commons was returned which differed from the opinions of its predecessor and agreed with those of the King and of the House of Lords. In 1831 the new House agreed with the views of the King, but differed both from those of its predecessor and from those of the House of Lords: the House of Lords therefore submitted. In 1835 the new House agreed in opinion with its predecessor, and differed from both the King and the House of Lords: the King and the House of Lords therefore yielded. The presence of this safety-valve enables the balanced constitution of England to work. Its absence destroyed the French constitutions of 1795 and 1848.

No legislative body elected by the people, and believing itself, therefore, to be the impersonation of the national will, is satisfied with the mere business of making laws. It soon perceives that the manner in which the laws are interpreted and carried into execution is quite as important as their enactment, and it cannot bear to see its intentions eluded and frustrated, or even imperfectly performed, by what it considers its subordinate—the executive. It sees that the spirit of a government depends on the spirit of its ministers, and that the same law may be a blessing in the hands of one administrator,

a curse in the hands of another, and nugatory in those of a third. It begins by requiring that those in whom it has not confidence shall be dismissed, and it soon requires that those in whom it has confidence shall be appointed. An executive, however, to which the constitution has expressly given the power of appointing and removing its ministers, does not easily acquiesce in these pretensions. Its favourites are seldom those of the Legislature; those of the Legislature are often its enemies. It offends the popular body, both by its appointments and by its dismissals, and a quarrel begins, which, in the absence of a mediator, is decided by violence.

Under the constitution of 1795, Tronson du Coudray was elected a member of the Conseil des Anciens, one of the two houses into which the Legislature was divided. Its duties were to adopt or reject, without amendment, the laws passed by the other House, the Conseil des Cinq Cents.

It has always been the misfortune of those who have had to rule France under republican institutions, that they have had to administer a form of government unpopular with the bulk of the nation. Such a state of things is dangerous even to a monarchy or to an aristocracy. Experience, however, shows that either of those forms may subsist for centuries supported only by a minority, and even by a small minority. An unpopular democracy sounds like a contradiction in terms, and must become a contradiction in fact. As soon as the people has found

the means of ascertaining and expressing its will, it will select or accept, or submit to the master whom it prefers to self-government.

The French people during the last seventy years, that is to say, ever since they have been able to manifest their wishes, have been far more influenced by hate than by love: they have been far more acute in discovering the faults than the merits of their institutions, far readier to pull down than to repair, far more destructive than conservative. The oppressions and abuses which had accumulated under Louis XIV., and his immediate successors, rendered the bulk of the nation furiously anti-monarchical. The Reign of Terror rendered it furiously anti-democratic. On the 5th of October, 1795 (13th Vendemaire An IV.), the Convention had to fight a royalist insurrection, on nearly the same ground on which, three years before, the monarchy had been destroyed by a republican mob.

There were three places, however, in which democracy was not extinguished. It still prevailed in the Convention, in the low populace of Paris, and in the army.

The Convention had been elected just after the 10th of August, when the republican fever was at its height. A majority of its members, by voting for the death of the King, had given up all hopes of favour, perhaps of safety, under a restoration, and nearly all enjoyed influence, patronage, and consideration, which must vanish as soon as, from sovereigns, they became not merely subjects, but the subjects of a hostile faction, as violent, and perhaps as unscrupulous, as they had been themselves.

The Parisian populace had the love of tumult and the hatred of authority which belongs to the lowest classes in all great capitals, and the indifference to human life, the readiness to take it and to risk it, which is peculiar to the mob of Paris. But it was dispirited, by its recent defeats; its leaders had perished, it had been disarmed, it had been excluded from the National Guard, and was at this instant merely a shadow of the tremendous insurrectionary power which, three years before, and thirty-five years afterwards, could sport with the institutions of France.

The army was almost the only great body that had gained by the Revolution. The bar had been silenced; the clergy had been murdered or exiled; the landed proprietors had fled, abandoning their estates to the holders of assignats; the merchants, bankers, and *rentiers* had been beggared; but the army stood erect in the general ruin. The camp and the garrison had afforded an asylum, which the denunciator and the public prosecutor did not venture to violate. In the three years of the Republic it had obtained successes which eclipsed all the glories of all the reign of Louis XIV. Its rewards had been as splendid as its victories. Men who four years before were following the plough —who under the *ancien régime* would have hoped for nothing higher than to be serjeants or under-lieutenants —found themselves generals and proconsuls, the arbiters between sovereigns and their subjects, and influencing the destinies of Europe. We may conceive the contempt or hatred with which Hoche, or Bernadotte, or Moreau looked on the counter-revolutionists, whose object

was to restore the reign of favour, privilege, and caste, under which no one could hold a commission until his nobility had been certified by the court genealogist.

Supported by the army, and wielding all legislative and all executive power, the Convention had been irresistible. But it feared, with great reason, that the legislative body which was to succeed it—elected, though indirectly, by universal suffrage, and representing the monarchical feeling of France — would abolish republican institutions. It took two different means to prevent this. One was the old expedient, constantly failing and constantly reproduced, of trying to fetter the supreme power by forbidding it to alter the Constitution, except at a remote period, and on conditions scarcely capable of performance. No change was to be made until it was demanded by three successive legislatures, and after three intervals of three years each. The other was effectual but transitory. The Convention decreed that two-thirds of the first legislative body should be taken from among its own members. As the members of the Directory were to be chosen by the Legislature, this secured to the new government a democratic executive, as well as a democratic legislative.

For the first year the pressure from without kept the Legislature and the Directory in tolerable union. The anti-republican minority, at the head of which were Barbé-Marbois, Portalis, Siméon, Tronson du Coudray, and Dupont de Nemours, knew well that as soon as the legislative body was changed by one-third, in May 1797, from a weak minority they would form part of a large

majority — a majority which, appointing the Directory, and through them the ministers, the judges, and the countless officials of France, and wielding the whole patronage of the army, would be far more powerful and far less responsible than any constitutional monarch, or indeed any despot can be. They waited, therefore, patiently for what appeared their inevitable triumph, and, without carrying on a systematic opposition, contented themselves with endeavouring to repeal, or to modify, the worst legislative atrocities of the Convention. Some of Tronson du Coudray's best speeches belong to this period of tranquillity—the last that he was ever to enjoy.

One of these was made on the 6 Pluviose An IV. (27th January, 1796), against the law of the 9 Floreal An III. (28th April, 1795). By that law the properties, or rather the expectancies, of all emigrants were confiscated by anticipation. So that if a son emigrated, the State became instantly entitled in possession to all the emigrant's presumptive share in his father's estate. When we recollect that by the law of the 3 Brumaire An IV. (24th October, 1794), all who in any meetings had proposed or concurred in any liberticidal proceedings (that is to say, who had opposed on any occasion the democratic faction), and all those who by blood, or even by mere affinity, were connected with emigrants, were incapable of public service, it is obvious that the ruling faction in the Convention had resolved to deprive of the means of subsistence all the adherents of monarchy or aristocracy who had

escaped the executioner—to starve all whom it could not murder.

'You deprive a man,' said Tronson de Coudray, 'of half his fortune, and your excuse is that his grandson has emigrated. You cannot call this a punishment, unless to have been the grandfather of an emigrant is a crime. But if it be not a punishment it is a robbery, and a robbery more mischievous and more hateful than any that is expiated on the scaffold. We can bar our doors against thieves, we can appeal against the partiality or the corruption even of a magistrate, but against the injustice of a law there is no defence and no remedy. An individual commits his crimes one by one, the law can rob at once thousands or millions. Not only all sense of security, but all morality, is destroyed when the example of wrong is set by the guardian of right, when the power which we have to dread is that which was created for our protection. Of all means of government the weakest, the most absurd, is injustice. Its insolence irritates, its oppression rouses hatred, its falsehood spreads distrust; and when once a government, and above all a popular government, has lost the public confidence, it is on the eve of destruction. It falls before the first assailant, however weak or however contemptible, because its own friends are still weaker, and still more worthless.'*

A few months afterwards, on the 3 Frimaire An V. (23rd November, 1796), an attempt was made to modify the law of the 3 Brumaire An IV. That law had been an act

* Vol. ii. pp. 35, 41.

of violence perpetrated by the Convention in its dying struggles. It was proposed, and passed after a single reading, on the day before that memorable assembly reluctantly surrendered its powers. Tronson du Coudray resisted the partial repeal, and consequently the partial retention, of a law of which every portion was atrocious.

'You know,' he said, 'that that law was extorted by a dominant faction. It was the price—even at that time perhaps an extravagant price—at which the anti-revolutionary minority purchased the Constitution. Those who paid that price were perhaps excusable. They yielded to necessity. But what excuse is there for us, who have the power in our own hands, if we retain any fragments of a law which introduces into a constitutional government the worst deformities of the revolutionary period—a law which recreates "suspects"* by hundreds of classes—a law which as soon as a citizen's name has been inserted on the list of emigrants—an insertion perhaps founded on mistake or on malice—deprives of their rights and of their employments perhaps twenty of his relations and connections—a law which expels from France, or buries in her prisons, all the most respected and the most respectable members of her clergy—a law which drives into perpetual exile every public servant, whom it has incapacitated, if within twenty-four hours after he is supposed to have been aware of his incapacity, he has not resigned his office—a law

* There is no English equivalent for a 'suspect.' It is a technical revolutionary term, indicating a person presumed to be a traitor, though not actually convicted of treason.

which creates privileged classes, as it has created "suspects," and allows the vilest Royalist or Anarchist, if he have sat in one of the three revolutionary assemblies, to sit on the bench, or even in the Legislature—a law which affects to allow those who disapprove of republican institutions to quit France, but to quit France as beggars; which professes, indeed, to permit them to carry with them their fortunes, but neither in the form of money nor of merchandise, and sells this favour at a price which leaves them nothing to take away—a law which breathes in every sentence the insolence of those who demanded, and the cowardice of those who conceded, it—which has not a clause which is not intended to serve some sordid interest or some base malignity.' *

The ultra-democratic faction, however, was too strong, and these laws continued, except during an interval of a few months, to disgrace the French statute-book, until they and the party which they were intended to maintain were swept away by Bonaparte.

We have already remarked on the resemblance of the Constitution of 1795 to that of 1848. They each, with an imprudence which posterity will scarcely believe, provided that the change both of the legislative and of the executive powers should take place at the same period. Under the Constitution of 1795, the 1 Praireal An V. (20th May, 1797) was the period fixed for the substitution of a new for one of the existing directors, and of 250 new members

* Vol. ii. p. 71.

of the Legislature, to be elected by the people, for 250 who sat there as ex-conventionalists.

The political character of the 250 new members showed what was the prevailing feeling in France. They were all, we believe without exception, anti-republicans. The Royalist, or rather, perhaps, the anti-democratic, party had therefore a majority of two to one. The Constitution, with a folly which again is almost inconceivable, had left to chance the selection of the retiring director. On this chance the destinies of France turned. Barras, La Reviellere-Lepeaux, and Rewbell were the three democratic directors. The two others, Carnot and Letourneur, though not Royalists in opinion, favoured in fact the tactics of the Royalist party. They treated the Revolution as ended, maintained the supremacy of the Constitution and of the law, and opposed all the violent expedients by which the democratic majority, both in the Directory and in the Legislature, endeavoured to control public opinion, and to force the French people to retain institutions which it abhorred. If the lot had fallen on La Reviellere, or on Barras, or on Rewbell, the majority in the Directory would have been turned against the democratic faction; for it is obvious that the Royalist majority in the Legislature would elect a Royalist director. It fell on Letourneur. The new director therefore, Barthélemy, was, with Carnot, still in a minority.

If the Royalist majority in the Legislature had been only tolerably prudent, they would have waited until the lot of retirement was drawn by one of the republican

directors — an event which could not be delayed for more than two years, and was probable, in the proportion of three to one, the very next year. The executive, the legislative, and the electoral bodies, being then all unanimous, might probably have effected a legal restoration of the monarchy. We say *probably*, not certainly, for the army was, as we have seen, still anti-monarchical. The army, however, had not then taken an active part in politics, and it is not likely that it would have ventured to oppose the rest of the nation.

But the Royalists acted with the usual impatience of a French majority. They declared instant war against the Directory, or rather against the republican majority of the Directory; apparently without having seriously considered what were their means for carrying it on. Executive power the legislative body had none; except the police of the building in which they sat. Their members were excluded from all other public functions; and their powers of legislation were fettered by the Constitution. It prohibited them, for instance, from allowing the emigrants to return, or to enjoy the revenues of their properties: it prohibited their making any provision for the exercise of any religion. When they had repealed the law of the 3rd Brumaire, they had exhausted their powers of legitimate anti-revolutionary legislation. They were forced, therefore, to have recourse to factious opposition— a conduct almost always adopted by a legislative body which has quarrelled with the executive, but almost always unsuccessful. The country at whose expense such a battle must be fought is not reconciled to the inconveni-

ence by being told that such are the rules of the game. When it sees bad measures proposed and good measures rejected, it does not accept the apology, that such are the means by which a bad government is to be frightened out or starved out. It does not choose to be misgoverned in order to prevent misgovernment.

Such, however, was the course adopted by the legislative body. The Conseil des Anciens, indeed, to which Tronson du Coudray belonged, acted with some prudence. It rejected some of the absurd or ill-timed decrees of the Cinq Cents, and it was saved, by having no initiative, from proposing any itself. The Cinq Cents began by attacking the government in its most vulnerable point—its finance. The state of the revenue, after five years of civil and external war, and eight of revolutions, was of course deplorable. The fear of a counter-revolution had stopped the sale of the confiscated property; general distress rendered the taxes, direct and indirect, unproductive; public credit was gone, except that which was to be obtained by making purchases and contracts on credit at extravagant prices; the armies were ill-fed, ill-clothed, and unpaid, except so far as they supported themselves by exactions or by rapine.

Under such circumstances the Cinq Cents refused to sanction any further taxes, and required the produce of those which existed to be paid into the hands of commissioners appointed by itself, and to be applied in payment, not of the most urgent demands, but of those entitled to legal priority. It forbade the notes issued by the Treasury to be accepted in payment for the national property. It

would not allow the growing produce of the taxes to be discounted; it would not allow the ordinary revenue to be applied to extraordinary expenses, or the extraordinary revenue to ordinary ones; it intercepted a sum of money which Bonaparte had sent direct to Toulon from the funds of the army of Italy in the hope of expediting some necessary supplies.

In quiet times such interference would have been merely vexatious and inconvenient. At a period of distress and struggle it was ruinous. Some of these propositions were rejected by the Conseil des Anciens, chiefly through the influence of Tronson du Coudray, but what passed was enough seriously to aggravate the existing pecuniary difficulties.

From the purse the Opposition proceeded to the sword. They proposed to give to military men dismissed or degraded an appeal to the Legislature from the Executive; they proposed that the National Guard, instead of comprehending, according to the republican theory, all capable of military service, should be an elected and comparatively small body, drawn almost exclusively from the middle and higher classes, in which anti-revolutionary opinions predominated. They proposed a law nominally to define the responsibility of the executive power and of its ministers, but really to increase the punishment of any illegal act, and to facilitate its proof; and to complete the parallel between their conduct and that of the leaders of the Legislative Assembly of 1851, they proposed that the guard of the Legislature should be increased by the addition of

cavalry and artillery, and put under the direct command of the Inspecteurs de la Salle du Corps Legislatif, whose functions were nearly the same as those of the modern Questors. As the Constitution forbade the presence of any regular troops within twenty-five miles of Paris, except on the express requisition of the Legislature, this measure, and the proposed reconstruction of the National Guard, would have given to the anti-revolutionary party the military command of Paris.

Animated by the contest, they ventured on still more dangerous ground: they proposed to take into consideration the events in Genoa and in Venice, and to enquire under what circumstances and by whose authority, a French army had overturned the two most ancient and most glorious governments of Italy.

The Directory had recourse to the expedient which naturally suggests itself to a continental government when attacked by a parliamentary majority. They resolved to crush their opponents by force. It was obvious, indeed, that such conduct involved the destruction of republican institutions; for the only force which they could call on was the army, and when once the army had been called in — when once a military body had subdued the representatives of the people — nothing would remain but to submit, sooner or later, to the dictatorship of the chief whom the army should think fit to adopt. But they could obtain an immediate triumph: they could obtain a few months, perhaps a few years, of supreme unresisted power; and when at last they should have to surrender, they might justly hope to be better treated by an usurping

soldier than by a restored monarch. They turned, therefore, towards the armies.

It was easy to persuade the soldiers, for in fact it was true, that the financial measures of the Legislature had contributed to the penury under which they were suffering. It was equally easy to persuade them, for it was also true, that a portion of the Legislature were striving to restore the monarchy. As for the Generals, Hoche, who commanded the army of the Sambre-et-Meuse, had been insulted, in the Cinq Cents, by a wanton imputation of embezzlement; Moreau, who commanded the army of the Rhine, had been kept inactive by the want of supplies; Bonaparte had been threatened with impeachment for his treatment of Genoa and Venice; and all were furious at the prospect of a restoration, which would degrade them from what were then the highest positions in France — almost in Europe — to be the subjects of a court, to have to solicit its favours, and, indeed, to implore its pardon.

Nothing was easier than to apply a torch to such materials. On the first signal of the government, addresses from the armies to the Directory, and from one army to another, poured in. The violence, we may say the ferocity, of these military state papers is an amusing contrast to the measured language of civil diplomacy. We extract as a sample a portion of the address which was forwarded from Augereau's division, then forming a part of the army of Italy:—

'Conspirators! you wish, then, for war. You shall have it; you rascals, you shall have it. But do you doubt the

result? What have you to hope in such a contest? You have, it is true, on your side numbers, cunning, and treachery. But you are cowards, and you are defenceless. We have arms, and virtue, and courage; the recollections of victory, and the enthusiasm of liberty. And you, the wretched instruments of the crimes of your masters — you, who hate us for having protected your properties and your frontiers; — you, who have rewarded us with contempt and penury, tremble! From the Adige or the Rhine to the Seine is but a step; — tremble! Your iniquities are recorded, and their punishment is on the points of our bayonets.'

'Citizen-Directors,' said Baraguy d'Hillier's division, 'We swear before you eternal hatred against the factious, and eternal war against the Royalists. Rely on our fidelity and our zeal. Our bayonets will always defend you from all enemies without or within.'

Encouraged by these addresses, the Directory ventured on a decisive move. They ordered a body of 27,000 men, a part of the army of the Sambre-et-Meuse, to march on Paris. On the 26 Messidor (14th July, 1797), the first column reached La Ferté Alais, about twenty-five miles from Paris, and therefore within the circle from which the Constitution excluded all regular troops, except when expressly demanded by the Legislature.

The Legislature, of course, asked the Directory for an explanation or an excuse, and on the 22 Thermidor (9th of August) the Directory made their answer. The presence of the troops within the forbidden circle was attributed to the ignorance of the officer in command.

His orders were to march from the Rhine to Brest: this was the shortest road, and he was not aware of the constitutional prohibition. As to the addresses from the army, the Directory deplored them, but deplored still more their causes. These, they said, were the want of supplies, the arrears of pay, the insolence of the returned emigrants, the priests and the journalists, and the contempt shown towards the armies and towards republican institutions.

'We trust,' they continued, 'that we shall save France from the ruin with which she is threatened, and extinguish the torches of civil war, though they are lighted by those who are supposed to be the guardians of peace. But while we are resolved to face the danger, we will not conceal it. We will tear the veil from the conspirators who are determined, by fraud or by force, to overthrow the republican Constitution, and to plunge France into the horrors of a fresh revolution.'

This was a declaration of war. The Anciens threw on Tronson du Coudray the task of drawing up the counter-declaration, and on the 20th of August, 1797 (3 Fructidor) he presented his memorable report, the last independent state paper which was to appear in France for nearly seventeen years.

'We have been fighting,' it began, 'for liberty during eight years, and we now seem to be almost in the arms of despotism. Not the despotism of the throne, which we overthrew on the 14th of July, not the despotism of the scaffold which disappeared on the 9 Thermidor, but the more formidable, because the more permanent, despotism

of the sword. A political party has called for the assistance of the army. Are they so blind as to think that freedom can survive a military interference? Most truly has the Constitution said, "the duty of the army is to obey—it cannot deliberate." Every military quality, in fact, is incompatible with deliberation, and even with discussion. His ardour, his enthusiasm, the habit of obeying the orders and following the example of his leaders, the recklessness of the camp, and the intoxication of success —all unite to render the soldier impetuous and unreflecting. He is violent while he debates, and headstrong as soon as he has decided. A few sentences from the chief whom he has been accustomed to adore convert him into a blind but furious instrument.

'It is thus that republics perish —it is thus that he who was only a general in the camp became an emperor in the forum. It is thus that emperor after emperor fell, and that the destinies of the civilised world came to depend on the result of a mutiny among the prætorian cohorts. Directors, have you ever thought on the fate of those who have had recourse to such assistance? Have you ever measured the interval between their triumph and their ruin? We know that you would not wish to survive the liberty of France — we know that you will perish in its defence, as we shall have perished before you. But how different will be our dying moments. We shall die for a cause which we have embraced, well knowing its danger, and looking on that danger with calmness. We shall quit life with indifference, because we value it only at what it

is worth, and because we know that our names will be honoured by a grateful posterity. You will feel that the blood of your fellow-countrymen has flowed as well as your own; that your own hand has lighted the conflagration which has destroyed you; that your names, republicans as you call yourselves, will always be associated with the birth of despotism.'*

The denunciations of Tronson du Coudray had the usual fate of political prophecies. The Directors cared far more for an immediate triumph than for a danger which they probably thought remote. They put the garrison of Paris, amounting to about 10,000 men, under the command of Augereau, the general whose division had joined in the most violent addresses against the Legislature; they placed as a reserve a large portion of the army commanded by Hoche on the edge of the constitutional circle of twenty-five miles, and they borrowed from Hoche himself 50,000 francs, his wife's fortune, to be employed in corrupting the 1,200 men who formed the ordinary guard of the Legislature.

Of these preparations the first two were of course notorious. It was obvious that the Directory intended to employ force. A speech of Talleyrand's was quoted. With his usual perspicacity and his usual indifference he said, 'The plan of attack is laid, and must succeed. The councils have only one course to take—to surrender at discretion.'

The Legislature seem now, for the first time, to have considered what were their means of resistance. Thibau-

* Vol. ii. pp. 112, 134.

deau has described two of the meetings at which the heads of the opposition held councils of war. They were convoked at Tronson du Coudray's. Among those present were Simeon, the president of the Cinq Cents, and Lafond Ladebat, president of the Anciens, Portalis, and Pichegru. The imminence of the danger was admitted. It was certain that La Revellière had declared that the sword was now the only arbiter; it was probable that the day on which the leading members of the Opposition were to be arrested was fixed. Portalis and Du Coudray proposed to accuse the three conspiring directors of high treason, to suspend them from their functions, direct them to be arrested, and, if they resisted, declare them *hors la loi*. Thibaudeau asked what was their physical force to execute such purposes. 'The guard of the Legislature, a portion of the 11th regiment, and the National Guard, when organised,' was the answer. But even the law under which the National Guard was to be called out had not passed. In the meantime it was proposed to send out into each of the twelve arrondissements of Paris twenty-five men from the guard of the Legislature, to form little military centres, round which the anti-republican bourgeoisie might rally. Pichegru, the soldier of the party, showed the weakness of such resources, and at the second meeting it was decided that they had no present means of employing force, and must therefore wait until they were provided with their National Guard.

'We parted,' says Thibaudeau, 'as men who were not to meet again. "I could not sleep, and amused myself by

drawing a picture of our situation."—"Our struggles," it records, "are as fruitless as those of a sick man on his bed. Ruin has surrounded us, and is pressing us more and more closely every day. We speak boldly from the Tribune, but all our courage is assumed. The Directory treats us with the contempt which is due to weakness; it knows that immediate despotism is within its grasp, and it cares not what may follow. The legislative body will not attack, it will not resist, it will lie down to be trampled on. What do I advise?—Nothing. The triumph of crime is at hand. Republicans have only to draw round them their cloaks and fall decorously."'

Schiller compares the state of Brussels, during the anxious interval between the entry of Alva and the beginning of his persecution, to that of a man who has just emptied a cup of poison, and is waiting for the first symptoms of its working. Such, too, was the state of Du Coudray and of his friends. An enemy, whom they could neither escape nor resist, was watching for the most convenient opportunity to spring on them.

Barras, to whom La Reviellere and Rewbell had intrusted the enterprise, at first proposed to act on the 16th Fructidor; but this was the 2nd of September, a date associated with too much horror to be selected for another insurrection.

On the morning of the 17th the Directors met as usual. At four, when they rose, Barras took La Reviellere and Rewbell aside, and told them that the time was come, and that Augereau had his orders. The ministers were now

summoned to Rewbell's apartment; the three directors joined them there; sentinels were placed at the doors and windows to prevent egress or communication; and they waited the result.

At midnight Augereau surrounded the Tuileries with his troops. The guard, partly bribed, and partly intimidated, gave up their posts without resistance. A detachment was sent to seize the two opposing directors; Barthélemy was taken in bed, Carnot escaped through the garden of the Luxembourg. So silently had all been done, that on the morning of the 18th Fructidor (4th of Sept. 1797), many of the obnoxious members went as usual to their respective halls in the Tuileries, and were arrested as they entered the building; others, among whom was Tronson du Coudray, after having been driven from the Tuileries, were seized in a house in which they had met to deliberate and protest: all were sent to the Temple. The remnant of the two legislative bodies, deprived of all those to whom they owed their vigour, or courage, or intelligence, met to ratify the violence of the night and of the morning, to re-enact with aggravations the laws of the 3rd Brumaire, to extinguish the liberty of the press, and to sentence to transportation for life the two directors, Carnot and Barthélemy, all the proprietors, publishers, and editors of forty-two newspapers, and more than fifty of the most eminent members of the Legislature, among whom was of course Tronson du Coudray.

Barthélemy, Tronson du Coudray, Pichegru, and thirteen others, as the most important victims, were sent off

the very same evening towards Rochefort, on their road to the tropical marshes of Guiana. They were carried in what were called, and indeed really were, *cages de fer*; that is to say, carts surmounted by an iron grating instead of a tilt, with one small iron door closed by a padlock. The journey lasted thirteen days. The prisoners passed the nights in the frightful dungeons which disgrace the provinces of France. They passed the days exposed to the brutalities of their escort and of the low revolutionary populace of the towns, to whose outrages they were pointed out as royalists and traitors. Once Du Coudray's patience seems to have been worn out. It was as they were passing through Etampes, one of the principal towns of a department in which, not two years before, he had been returned by a triumphal majority. 'Yes,' he cried to the crowd that was insulting him, 'it is I, it is your representative, whom you see in this iron cage; it is I, whom you sent to defend your rights, and it is in my person that they are violated. They are dragging me to the place of punishment, untried, unaccused. My crime is, that I have protected liberty and property; that I have striven to restore peace to the country and the soldier to his family; that I have kept my oath to the Constitution. These are the crimes for which you league with the Government to torture me.'

The voyage lasted seven weeks, and appears to have resembled the celebrated middle passage of the slave trade, except that the sufferings of the negroes were the result merely of the indifference of the slave-traders to the

misery of their cargo, those of the deportés were intentionally inflicted. To want of space and want of air was added want of food. By the eighth day only three out of the sixteen were able to stand, and it is difficult, when we read the journal of Ramel, to understand how any of them reached Cayenne alive.

The coast of French Guiana is among the most unhealthy portions of the globe. It is alluvial, intersected by almost a network of sluggish rivers, covered with rank vegetation, infested even beyond the average of that coast by the flying and creeping and crawling pests of tropical jungles, streams, and marshes, and enjoys no variation of season, except that the heat is accompanied by constant drought for one half of the year, and by constant rain for the other half.

The prison selected for the exiles was the fort of Sinnamary, situated on the river of that name, about seventy miles from the town of Cayenne. It is a solitary square wooden building, about 140 yards each way, surrounded by a deep and wide ditch. Before it runs the river; immediately behind and on each side is an impenetrable forest. In the court-yard were eight huts, built to serve as prisons for negroes. One of them was occupied by the Terrorist Billaud-Varennes, who had been transported some months before. The new comers were distributed in the seven that remained. Tronson du Coudray had for his companions, Lafond, the ex-president of the Conseil des Anciens, and Barthélemy, the ex-director.

The first who sank under the climate was General de

Murinais. His health, indeed, had been destroyed by the hardships of the voyage. He was a man of high character and family, whose crime was that he belonged to the majority of the Conseil des Anciens, and was one of its inspectors. Tronson du Coudray pronounced his funeral eulogium: Ramel tells us that it drew tears from the garrison and the negroes. A strong testimony to its eloquence was an order from Jeannot, the governor, a nephew of Danton's, that whoever in future tried to excite compassion for the deportés should be instantly shot.

The next victim was Bourdon de l'Oise, the hero of the 9th Thermidor, to whose courage and decision it was owing that the directors themselves were not bound to the plank of the guillotine.

A few days after, the fever of the country seized Tronson du Coudray. He appears to have borne his imprisonment more impatiently than his companions. He did not, says Ramel, complain of his physical sufferings, but of the manner in which they had been inflicted. The illegality and violence of the *coup d'état* affected him more than its cruelty. He was always crying out for a trial and a judge; and, even in his last illness, was as much irritated by the injustice of his treatment as he had been on the first night that he spent in the Temple. His friends, however, persuaded him to apply to be removed to the hospital of Cayenne. The governor's answer is so characteristic of the feelings and language of the revolutionary proconsuls that we insert it verbatim:—

'Je ne sais pourquoi ces messieurs ne cessent de m'im-

portuner. Ils doivent savoir qu'ils n'ont pas été envoyés à Sinnamary pour vivre.'

He died on the 27th of May, 1798, six months after his arrival at Sinnamary, about seventeen months before the base despotism of the Directory made way for the glorious despotism of the Consulate. When that event recalled the exiles from Sinnamary, only two were found there;—Barbé-Marbois and Lafond-Ladebat. Eight had escaped almost miraculously in an open boat; the rest had died.

More than half a century has passed since this tragedy was enacted on the shores of French Guiana. It is now to be repeated on a much grander scale.* Among the defects of character in the present ruler of France, one of the most fatal is the want of originality. He is essentially a copyist. His opinions, his theories, his maxims, even his plots, all are borrowed, either from the Convention or from the Directory, or from a still more dangerous model—from a man who, though he possessed genius and industry, such as are not seen coupled, or indeed single, once in a thousand years, yet ruined himself by the extravagance of his attempts. It would be well for Louis Napoleon if he could utterly forget the whole history of the Revolution. He might then trust to his own sense, or to that of his advisers. Either would probably lead him into fewer dangers than a blind imitation of what was done fifty or sixty years ago, by men very unlike him, and in a state of

* This was written in the beginning of 1852.

society, both in France and in Europe, very unlike anything which now exists.

In the meantime, like all imitators, he exaggerates all that is monstrous in his monstrous originals. The 2nd of December was a parody of the 18th Fructidor, only in larger proportions. Instead of 10,000 troops, which was the whole force of Augereau, Louis Napoleon occupied Paris with about 60,000. The Directory, on that night, arrested sixteen of their opponents; Louis Napoleon, seventy-eight. The whole number of persons whom the Directory sent to Guiana was 335. Those whom Louis Napoleon has seized, and has either already sent away or detains in the frightful prisons of Rochefort and Brest, and the other ports on the Atlantic, are already counted by thousands: the lowest estimate that we have heard is 8,000, the highest 12,000; and we believe the latter to be nearer to the truth. A single department, the Nièvre, has furnished more than a thousand. A traveller through the middle of France, in the latter part of February 1852, found the roads swarming with prisoners on their way to the coast. Some in long strings on foot, others piled together in diligences, in caleches, and in carts. The Directory published the names of their victims; those of Louis Napoleon are known only to himself or to his agents; among them may be many of the persons supposed to have perished in the massacre of the 5th of December. All that is known is, that about 3,200 have since disappeared from Paris: they may have been killed on the Boulevards, and thrown into the large pits in which those who fell on that day were promiscuously

interred; they may have been among the hundreds who were put to death in the court-yards of the barracks or in the garden of the Luxembourg; they may be in the *casemates* of Fort Bicêtre or in the *bagnes* of Rochefort, or they may be at sea on their way to Cayenne.

The story of one we will relate. It is that of a young author whose name, as he may still be living, we suppress. He was arrested on the 2nd of December, but his friends were told not to make themselves uneasy; that his liberal opinions were known, and that he was imprisoned merely to prevent his compromising himself. Week, however, after week went on, during which his place of confinement, the *casemates* of Fort Bicêtre, was gradually filled with 3,000 prisoners. His friends were thinking with anxiety of the influence which the cold of a Parisian winter, endured in damp dark vaults, and the pestilential air produced by the crowds which had been thrust into them, might produce on a constitution unaccustomed to hardship. At length they found that he had quitted Fort Bicêtre, but that he had quitted it on his road to Cayenne, —untried, indeed unaccused; but sentenced to a death in comparison of which the Noyades were merciful.

Those who are shocked only by the arbitrary violence of the deportations—who see in them only the exile of 10,000 persons, without public, or, as far as we know, without even private enquiry, on the evidence of secret informers, probably the private enemies, or the debtors, or perhaps the heirs of those whom they denounce—those who see only this, horrible as it is, see only a portion of the

horrors that are going on. They see their injustice and their oppression, but only a part of their cruelty. Even if Cayenne were prepared for the reception of the deportés—if there were barracks or even prisons to lodge them, wholesome food to support them, and the other provisions made for them which are necessary to the existence of an European under the tropics—the climate alone would destroy them. The whole number of those who were transported to Cayenne in 1797 and 1798 was, as we have already said, only 335. So small a number was easily provided for. Yet of those 335 there were living in 1800 only 115, including 23 who had escaped soon after their arrival. Of the 312 who remained in the colony, 210 died in two years. What will be the result when thousands are thrown at once into a country of which the old inhabitants will be scarcely more numerous than the strangers? The deportés are sent, not to exile, but to death. 'Ils n'ont pas été envoyés à Cayenne pour vivre.'

The grief with which England contemplates the calamities of France is mixed with surprise. It is difficult to understand how a nation so jealous of authority, so impatient of control, and so careless of life, submits to an oppression of which there is no other example on this side of the Alps. We believe that the explanation is to be found in the terror inspired by deportation. Men who would affront the guillotine or the musket-ball, shrink from the slow torture of the crowded convict ship and the pestilential prison. We have already stated that the number of persons undergoing, or sentenced to these

cruelties, is believed to exceed 10,000. Many thousands more are supposed to be in the vaults and *casemates* which the French dignify with the name of prisons. Over every one of these prisoners deportation is suspended. It is suspended, indeed, over the head of every Frenchman. We have before us a few of the proclamations of the prefects and generals, each of whom seems, like a Turkish pasha, to have within his district supreme legislative and executive power.

Thus, the prefet of the Haute Garonne declares that every person present at any meeting not authorised by himself, shall be held to be a member of a secret society, and punishable as such.

That everyone who, in a commune in which he is not resident, disseminates any political opinions [se livre a une propagande quelconque], shall be held a promoter of civil war.

The prefet of Valenciennes declares enemies of the country all who suggest doubts as to the sincerity [loyauté] of the government, or of any of its acts.

The prefet of the Bas Rhin orders the arrest of all who distribute negative voting papers.

The commander-in-chief in the department of the Cher subjects to military execution—

Every person interfering in an election in a commune in which he does not reside.

Also every person spreading rumours or suggesting doubts tending to unsettle people's minds [inquieter les esprits].

The prefet of Bordeaux subjects to the same punishment all persons carrying weapons, unless specially authorised.

Also all persons distributing [col-portant] printed or written papers.

Also all persons who assist, or receive, or even supply with food, any persons pursued by the authorities.

For this last crime we see, in a Lyons paper of the 30th of December, 1851, that one Brun was sentenced to ten years', and one Astier to twenty years', imprisonment in irons.

The natural result of such a tyranny is either a sudden and universal insurrection, or silent abject submission. There can be no middle course.

The French have preferred the latter. They are bold, but not resolute. They are violent and impetuous, but not enthusiastic. The audacity with which the mob has from time to time risen against the garrison of Paris, murdered its outposts, stormed its barracks, and repulsed its assaults, is the fruit not so much of love of freedom, or hatred of despotism, as of indifference to what they were hazarding. A life alternating between toil, vice, and debauchery, endeared by few social sympathies, ennobled by no ulterior objects, a mere struggle for existence and amusement, is readily risked, because it is scarcely worth preserving. The *émeutier* gambles with it, as he is ready to gamble with anything else that he possesses; if he wins, he has a week or two of triumph and boasting and im-

portance; if he falls, his troubles are over, and he quits a world in which he had to suffer far more than to enjoy.

Such insurgents may sweep away by a sudden assault an unprepared or inadequate regular force. For one day, for two days, and it may be for three, they can repel from their barricades even a considerable army, but they are unfit for prolonged civil war. They want skill, they want combination, and, above all, they want pertinacity. As long as the army remains Napoleonist, we hope nothing from the people.

LORD CAMPBELL'S CHIEF JUSTICES.*

[EDINBURGH REVIEW, January 1851.]

AMONG the felicities of Lord Campbell's long and prosperous career, the comparative leisure which he enjoyed from 1841 to 1850 was, perhaps, one of the greatest. It is to that interval of leisure that he probably will owe his widest and his most permanent fame. Had he retained the Irish seals, or exchanged them for the high office which he now holds, he would have been remembered as a successful advocate, a useful legislator, and a distinguished judge. His decisions would have been quoted by lawyers, and historians must have noticed him as a debater; but his literary reputation would have depended on his speeches.

Now speeches, however admirable, are seldom popular. Of the hundreds, probably the thousands, of orators, who, from the times of Ulysses down to those of Guizot, have ruled or charmed their hearers, there are really only two — the great Greek and the great Roman — whose speeches are

* The Lives of the Chief Justices of England, from the Norman Conquest to the Death of Lord Mansfield. By John Lord Campbell, LL.D. F.R.S.E. 2 volumes. London: 1849.

familiarly read. During centuries the greatest masters of thought and of language that ever spoke or wrote threw into public speaking the whole force of their brilliant talents and unwearied diligence. Many of their orations are preserved, but they are used only as materials of history or as commentaries on Demosthenes; and would be probably as much studied, or nearly so, if they had none of the high qualities to which their authors devoted the labour of years. Some outlines, indeed, of Pericles are well known, because they have been worked into the enduring fabric of Thucydides, but they are not speeches but essays:—wonderful examples of acute observation and elaborate reasoning, but too compressed and perhaps too refined to be followed by even an Athenian audience.

All Roman oratory, except that of Cicero, has perished; it did not retain sufficient interest to repay transcription. Modern eloquence has been embalmed by the printing press; but it is preserved like a mummy. It does not perish, but it is not looked at. Who now reads the vast body of eloquence which rendered the bar of France illustrious? How few consult, as collections of works of rhetorical art, the records of her deliberative assemblies? Mirabeau is known in consequence of the interest excited by his strange social, and by his brilliant historical, life; but of the speeches which influenced the destinies of Europe little is now read except some dazzling sentences. The world had almost forgotten that Robespierre was a great orator, when Lamartine disinterred a few specimens

of the cold argumentative enthusiasm which made him master of the Jacobins and of the Convention.

There are few English libraries that do not contain whole lines of volumes of Pitt, Fox, Burke, Windham, Erskine, and Sheridan; but which of them, except those of Burke, are ever taken from the shelf? and Burke's speeches are read principally in consequence of the very qualities which interfered with their efficiency when delivered — their penetrating philosophy and widely-drawn and varied illustrations. We do not believe that Lord Campbell will be an exception to the general law which confines the orator to evanescent celebrity: which puts him on the same footing with the other artists whose business it is to produce immediate and powerful but transient effects: to excite and animate and delight those who see and hear them, but to leave behind them a reputation depending, like the peculiarities of the Church of Rome, not on Scripture, but on tradition.

From this fate the Lives of the Chancellors and the Lives of the Chief Justices will preserve him. He has enriched the literature of England with contributions which will probably never die, because they will always amuse, and it is the power of amusing that confers literary immortality. The writer who has merely conveyed instruction may leave a permanent name, but it soon outlives the popularity of his works. They are among the quarries from which his successors dig materials to be employed in constructing more spacious edifices, which, in their turn, serve merely as materials to another generation of philo-

sophers. Few, even among scholars, know much of Plato: every schoolboy is familiar with Plutarch. The 'Rambler' and the 'Idler' have become mere names. It is in the 'Lives of the Poets,' in the 'Journey to the Hebrides,' and, far more than those, in the gossip of Boswell, that Dr. Johnson really lives.

There is, indeed, in Lord Campbell's works much instruction. His subjects have been so happily selected, that it was scarcely possible that there should not be. An eminent lawyer and statesman could not write the lives of great statesmen and lawyers without interweaving curious information, and suggesting valuable principles of judgement and useful practical maxims: but it is not for these that his works will be read. Their principal merit is their easy animated flow of interesting narrative. No one possesses better than Lord Campbell the art of telling a story: of passing over what is commonplace; of merely suggesting what may be inferred; of explaining what is obscure; and of placing in a strong light the details of what is interesting from its strangeness or from its importance.

Of course it is impossible to notice all, or even the majority, of so numerous a list of biographies. We shall select a few names, which, either from their intrinsic interest or from the manner in which they have been treated by Lord Campbell, appear to us to deserve especial consideration.

We shall begin by Sir Edward Coke.

He is obviously a favourite with his biographer; and

Lord Campbell, being a judicious patron, has heightened the flavour of his praise by a judicious mixture of blame. Still we cannot but think that he puts his hero too high: —

'Most men,' he says, 'I am afraid, would rather have been Bacon than Coke. The superior rank of the office of Chancellor, and the titles of Baron and Viscount, would now go for little in the comparison; but the intellectual and the noble-minded must be in danger of being captivated too much by Bacon's stupendous genius and his brilliant European reputation, while his amiable qualities win their way to the heart. Coke, on the contrary, appears as a deep but narrow-minded lawyer, knowing hardly anything beyond the wearisome and crabbed learning of his own craft, famous only in his own country, and repelling all friendship or attachment by his harsh manners. Yet when we come to apply the test of moral worth and upright conduct, Coke ought, beyond all question, to be preferred. He never betrayed a friend, or truckled to an enemy. He never tampered with the integrity of judges, or himself took a bribe. When he had risen to influence, he exerted it strenuously in support of the laws and liberties of his country, instead of being the advocate of every abuse, and the abettor of despotic sway. When he lost his high office he did not retire from public life "with wasted spirits and an oppressed mind," overwhelmed by the consciousness of guilt, but bold, energetic, and uncompromising, from the lofty feeling of integrity, he placed himself at the head of that band of

patriots, to whom we are mainly indebted for the free institutions which we now enjoy.' *

To most of the readers of the histories of those times the names of Bacon and Coke appear to be contrasts. Yet there were many points, and those very important ones, in which their characters agreed. Both were the slaves of ambition and of avarice. Ambition drove Bacon to trample on Essex, and Coke to trample on Raleigh. Coke's integrity did not show itself until he was on the Bench. Lord Campbell admits that while Attorney-General he unscrupulously stretched the prerogatives of the Crown, was utterly regardless of public liberty, and perverted the criminal law by much individual oppression.† So much for his public morality. In private life we find him deliberately sacrificing the whole happiness and, as it turned out, the honour and the virtue of his young daughter, to the hopes of reconciling himself to the Favourite and to the King. This is perhaps less despicable than the corruption of Bacon, but more odious. Both Bacon and Coke were eager to acquire money; but the covetousness of Bacon was stimulated by the desire of magnificent expenditure; that of Coke by the desire of vast accumulation. And as the wish to accumulate is less urgent than the wish to spend, Coke kept his passion under better control than his great rival. Avarice seduced Bacon into dishonour — Coke only into meanness.

Both Bacon and Coke are entitled to a high rank among the benefactors of mankind; and many of our readers

* Vol. i. p. 345. † Vol. i. p. 268.

may be surprised at our discussing as a question their comparative preeminence. The services rendered by Bacon are acknowledged by the whole civilised world. Every head bows at the name of the reformer of philosophical inquiry. The merits of Coke are known only to lawyers and historians; and even historians have in general passed slightly over his parliamentary career, and have treated his judicial independence merely as honourable to him, without attaching to it great public importance. Yet we are inclined to place Coke, as an object of the gratitude of posterity, not merely on a level with Lord Bacon, but perhaps even above him. Bacon's services in pointing out the true road to scientific discovery were unquestionably very great. To him we owe mainly the rapid progress of physical science. But it must be recollected, in the first place, that he did comparatively little to advance mental science. After three and twenty centuries, we find rhetoric, criticism, and logic nearly as they were left by Aristotle. If our knowledge of politics exceeds his, we owe it principally to our enlarged experience. If our morality is purer, it is owing altogether to Revelation. The Nicomachæan ethics pushed the science of mental pathology and the art of morality as far as unassisted reason could carry them. In the mental sciences and arts, as far as we can infer from the results which they obtained, the methods employed by the Greeks did not require correction from Bacon. Hume's expectation of the 'like reformation in all moral

disquisitions' from the experimental method, has not yet been realised.

In the second place, there seems no reason to believe that, if Bacon had never existed, the advance even of physical science would have been materially retarded. The real emancipator of the human mind was Luther. After principles of belief so ancient and so firmly established as those which he attacked had been uprooted, it was impossible that the baseless assumptions of ontologists and cosmogonists could remain unchallenged. It was impossible that Philosophy could long be permitted wantonly to assume her premises, after Faith had been forced to submit hers to the test of enquiry. Sooner or later the bubbles of the schools would have been punctured by common sense, and they would have collapsed as completely as they did under the hands of Bacon.

And lastly, the knowledge to which he led the way, important and even glorious as it is, is not the knowledge on which human happiness principally depends. Abstract and physical science have been cultivated with most success in France — moral and political science in England; and how different has been the degree of happiness enjoyed by the respective countries. Even in the arts to which physical science is subservient, we excel those who furnished the principles of which we make use. We are better navigators and better manufacturers than those on whose discoveries we found our processes. If a people enjoy the institutions which are favourable to security of property and to freedom of action and thought,

it will obtain moral and political knowledge; and it is on that knowledge, and on the habits of acting and feeling which that knowledge produces, that its happiness principally depends.

Now it is the glory of Coke, that he was one of the illustrious men to whom we owe the parliamentary independence on which our free institutions are based, and the judicial independence by which they are preserved. The most celebrated part of his history is, perhaps, his magnanimous firmness as a Judge. For in that struggle he was alone. A judge, a removable officer of the Crown, appointed and dismissed according to the caprice of the monarch, was as much a servant as any page in the royal household. When Coke, to the question whether he would stay proceedings in obedience to a royal order, answered that 'When the case happened he would do that which it should be fit for a Judge to do,' he took a position from which all his colleagues fled, and which none of his immediate predecessors had ever assumed, or probably had ever thought of assuming. And he not merely risked influence and station, he knowingly abandoned them. Surrounded by such rivals and enemies, without supporters or even friends, old and unpopular, he could not hope to beard so despotic a monarch as James and to retain his office; he could not rely on even his personal safety. That he preserved his fortune and his liberty was more than he had a right to expect. But wealth and freedom, to a man deprived of power and exiled from court, were not then what they are to us, or what they

were even fifty years afterwards. The sovereign was then really the fountain of honour, and those on whom he looked coldly were frowned on by the world. We admire a man who sacrifices power to principle, though he is rewarded by immediate popularity. Coke made the sacrifice, but had to wait many years for the reward.

The splendour of Coke's conduct as a magistrate has somewhat obscured his reputation as a statesman. Yet the part which he took in securing to us internal freedom of trade, by abolishing monopolies, and to obtain for us extended free trade, by opposing the restrictive system which was then beginning to infuse its poison into our commercial code, would have given immortality to any man who had not other and stronger claims to it. It was fortunate for his fame as a political economist that England was still an exporter of agricultural produce, so that the immediate and obvious interests of the governing classes were promoted by free trade; this enabled him to say, 'I never yet heard that a bill was ever before preferred in Parliament against the importation of corn, and I love to follow ancient precedents.' We doubt whether, if he had lived in 1846, he would have ventured to undo the legislation of 150 years. His defence of usury laws, on the ground that God forbade usury to his own people, and because usury is contrary to the law of nature, is not promising.

Still more meritorious was the Protestation of 1621, in which, replying to the King's command to the House of Commons 'that none therein should presume henceforth

'to meddle with anything concerning our government or deep matters of State,' he declared, 'that the arduous and urgent affairs concerning the King and State, and the making and maintenance of laws, and the redress of grievances, are proper subjects and matter of counsel and debate in Parliament, and that the Commons in Parliament have and ought to have liberty and freedom to treat of such matters in such order as in their judgement shall seem fittest.'

More important still were the resolutions of 1628, which affirmed, 'that no freeman ought to be detained in prison unless some cause of the detainer be expressed for which by law he ought to be detained, and that the writ of habeas corpus cannot be denied to any man that is detained in prison or otherwise restrained by command of the King, the Privy Council, or any other:' resolutions on which is founded a degree of personal liberty which no other portion of Europe, not even France after seventy years of revolution, has yet acquired.

But his greatest claim to our gratitude is as the framer of the Petition of Right, which laid so firmly the basis of parliamentary, as opposed to monarchical, government, that it was only by civil war that Charles could hope to shake it. His speech, in moving the rejection of the Lords' amendment 'that nothing contained in the bill should be construed to entrench on the *sovereign power* of the Crown,' has a simplicity and brevity which amount to eloquence. 'This is a petition of right, grounded on Acts of Parliament and on the laws which we were born to

enjoy. Our ancestors could never endure a "salvo jure suo" from kings — no more than our kings of old could endure from Churchmen "salvo honore Dei et Ecclesiæ." We must not admit it, and to qualify it is impossible. Let us hold our privileges according to law. That power which is above the law is not fit for the king to ask or the people to yield. Sooner would I have the prerogative abused, and myself to lie under it: for, though I should suffer, a time would come for the deliverance of the country.'

We are inclined to think that Coke's political services are somewhat undervalued even in England. He certainly has not received from foreign nations the gratitude to which he is entitled. The reigns of the Stuarts form the turning point in the history not only of England but of Europe. With the single exception of Holland, the current was everywhere running steadily towards absolute monarchy. Nation after nation had been forced to surrender liberties as ample as those which, at the accession of James I., we could legally claim. England was the only remaining stronghold of the constitutional monarchy which our German ancestors spread over the whole of Europe.

Lord Campbell thinks that, even if Charles had succeeded, yet 'in the course of time the violence of popular discontent, and the weakness of a despotic government, would at last have brought about a sudden and dreadful convulsion such as those which we now see raging on the continental States.'* This we are inclined to doubt. We do not

* Vol. i. p. 387.

think that it can be affirmed with confidence, that in the seventeenth century a permanent despotism was impossible in England. Without doubt such a form of government cannot coexist with a parliament. The despotism of France melted away before the Etats Généraux. But parliaments might have been disused or even abolished. Lord Campbell has shown that the law, as laid down by Chief Baron Fleming in 'The great Case of Impositions,' would have enabled the Crown to enjoy a sufficient revenue without any parliamentary tax. According to that case, which for years was accepted as law, 'It being for the benefit of every subject that the king's treasure should be increased, all commerce and dealings with foreigners, like war and peace, are determined and regulated by the absolute power of the king. No importation or exportation can be but at the king's ports. They are his gates, which he may open or close when and on what conditions he pleases. The wisdom of the king must not be disputed, for, by intendment, it cannot be separated from his person. If it be objected that no reason is assigned, I answer, it is not reasonable that the king should express the cause and consideration of his actions. They are *arcana regis*.' *

Armed with such doctrines, and supported by an unlimited power of imposing duties on all imports and on all exports, the king of England, like his brothers on the Continent, might have gradually assumed every power that he wanted, until the liberties of England, without any positive revolution, had become as obsolete as those of Bohemia

* Vol. i. p. 234.

have become. Our American colonies would have withered under the absolute viceroys of an absolute king. Holland, unprotected by the sympathy and the force of England, would have become a part of France. France herself would have had no example of freedom to induce her to break the gilded chains which she appeared to wear as ornaments. And while France and England remained despotic, there would have been little chance of the establishment of constitutional government anywhere else.

We have left to the last the portion of Coke's achievements on which his reputation has chiefly rested — his legal writings. In his Reports and his Institutes he left a memorial, now crumbling into dust, of his unwearied diligence, his exact memory, and his wonderful power of analogical reasoning.

And he left in them also a memorial of his utter unfitness to discover, or even to understand, the real purposes for which laws ought to be made. One of the most important of these purposes is to lay down the rules according to which landed property is to be enjoyed, transmitted, and transferred. The different problems into which this great question may be subdivided are not all resolvable in the same way in every state of society. There are some political institutions to which permanent entails are suitable, others in which a less durable power of entail is advisable; and there may be some in which none ought to be permitted. Some great nations—such as France—repudiate, except in a very slight degree, testamentary power; others — such as England — insist on its existing absolutely

uncontrolled. But there are two rules which appear to be universally expedient—to be equally applicable in a new and in an old community, in a monarchy, in an aristocracy, and in a democracy. They are, first, that where a man has the power, and has clearly manifested the will, to give property, or a partial interest in property, to another, the conveyance should be effectual; and, secondly, that the law should oppose, or at least should not facilitate, the acquisition of property by wrongful acts.

Now the law of England, as expounded in the courts of common law, not only has neglected, but has systematically and intentionally violated both these rules. It has surrounded the transfer of property with a network of quicksands and reefs, through which a narrow channel winds, dangerous to even the most cautious and the most experienced pilot. Even now, after the track has been buoyed by the decisions of centuries; after act of parliament on act of parliament has endeavoured to widen and improve it; and after the courts of equity—with a courage and a good sense which are above all praise—have applied their powerful machinery to float us over its dangers and obstructions—even now the English system of conveyancing is a disgrace to a civilised nation. The law of real property, as created and administered by the common law judges, instead of being a collection of rules founded on convenience, is an arbitrary science, like heraldry, or astrology, or freemasonry, based on definitions and similes, and sacrificing without scruple

both justice and reason, to keep its metaphors unbroken.

Thus one sort of uncertain future interest, called a contingent remainder, was said to be supported by a previous interest, which the courts thought fit to say must be an interest for life. If this interest was absent or destroyed, the support failed. Therefore, in pursuance of the metaphor, the remainder failed too. A science resting on verbal subtleties might have been expected to possess at least an accurate terminology. So far, however, is this from being the case, that the words 'right,' 'possibility,' 'estate,' 'contingent,' 'executory,' 'limitation,' 'purchase,' 'power,' and, in fact, most of the important technical terms in conveyancing, are promiscuously used in half a dozen different senses; and grave decisions have been grounded, and even rules of law established, on syllogisms, in which the middle term was used in one sense in the major, and in another in the minor.

But while the law dug these pitfalls around the honest purchaser, devisee, or inheritor, it devised a whole science, called the learning of deforcement, for the benefit of the fraudulent or violent intruder. It divided wrongful possessors into classes, such as abators, disseisors, deforciants, and intruders, and allotted to them their several modes of defeating the claim of the lawful owner.

We will illustrate its proceedings by a case within our own experience. A man without near relations devised his property to a friend who was not his heir. The

devisee died a few days before the testator. The devisee's son thought it hard that such an accident should deprive him of an estate. Provisionally, therefore, he took possession, and consulted his lawyer as to the means of retaining it. The answer was, that he was an abator, and that the means given to him by the law for the purpose of defeating the lawful heir were, a feofment and a fine. Both these proceedings were adopted. But on taking further advice, he was told that he had not used them in their proper order. He had, it seems, levied the fine before he made the feofment, and the charm, therefore, would not work. So he reversed the process, first made the feofment, and then levied the fine. Again, however, it was found that he had done wrong. Both the feofment and the fine having been perfected during a vacation, the fine had reference to the preceding term, and overreached the feofment. So he began again, and made a feofment in one term, and levied a fine n the next. At last the professors of the dark art declared that the legal magic had been properly employed, and he is now the undisputed, indeed the indisputable owner.

A recent act of parliament has destroyed this science by abolishing tortious conveyances; but until a few years ago they were in constant use. They were used by persons having terms of years, who wished to rob the reversioner of his fee simple; by persons in possession, who wished to despoil contingent remaindermen; and, as in the case we have mentioned, by mere intruders, who

wished to seize on property to which they had not the shadow of a claim.

It is to this system, and to the expense and insecurity which it seems to have been intended to create, that we mainly owe one of our greatest political inconveniences and dangers — the separation of the great mass of our population from the ownership of land. In the larger portion of Europe — almost everywhere, indeed, except in Spain, in parts of Italy, and in the British Islands — the greater part of the soil belongs to small proprietors. They are less skillful than our farmers, but they are more diligent, more economical, and more provident. They marry late, and consequently have small families: in France the average number of children to a marriage is only three. They defend the rights of property, because they possess them; dependence on public relief or on private charity, instead of being, as before the Poor Law Amendment Act it was with us, the rule, is the rare exception.

From this fertile source of happiness and moral improvement our peasantry, indeed our middle classes, are cut off by our system of conveyancing. The French peasant, as soon as he has agreed with his neighbour for the purchase of half an acre, goes with him to the notaire, and has it transferred into his name; and if he wishes to sell, can part with it as easily as he obtained it. A small purchaser with us has to ask for the abstract of the title, to send it to his lawyer, to pay for its being examined, to pay for further enquiries being made, to pay for the consideration of the answers to those enquiries, and, perhaps,

after half a year's delay, finds that he has purchased a chancery suit. As the amount of these expenses in no respect depends on the value of the property — for the title to an acre may be as intricate as that to a whole manor — they operate as an almost prohibitory tax on small purchases. We once bought a small freehold as a qualification; the price was 40*l.* — the expenses were 30*l.*

To this cause, also, is to be attributed the comparatively low value of land in England. France is a poorer country than England, landed property there is a less advantageous investment: it is subject to enormous direct taxation, and does not give the social preeminence which attends it in England. But it sells for one-third more. Forty-five years' purchase is as common in France as thirty years' purchase is with us. If, instead of clamouring for protection from foreigners, the landed interest had asked for protection from lawyers — if they had required from the legislature, of which they are the most powerful portion, a rational system of conveyancing, they would have done what they have failed to do — they would have really raised the value of land.

Now this monstrous system was Sir Edward Coke's idol. It was this silly, but yet mischievous rubbish, which he thought the perfection of reason. He resisted its correction by the courts of equity — and by the clearness with which he expounded its principles, and the sagacity with which he endeavoured to reconcile its discrepancies, he contributed more than any other writer to its permanence. No man knows its faults better than Lord Campbell; no

man has laboured more zealously or more ably in the arduous work of correcting them. We rather wonder, therefore, at his rating so highly as he appears to do the services of Coke as its expounder, and, to a considerable degree, its creator.

We confess that the utter ignorance of the real objects of legislation which is betrayed by Coke's writings almost leads us to modify our praise of his parliamentary conduct. We cannot but suspect that the measures which he carried, great and well directed as they were, were almost as much the fruit of his quarrel with the Government as of his wish to promote the welfare of the people. With our imperfect nature, when benefits have been conferred, we ought not, perhaps, to scan nicely the motives by which our benefactors may be supposed to have been influenced. Great services ought to be repaid by great gratitude. Still it must be admitted that Coke's opposition to monopolies, to arbitrary imprisonment, and to arbitrary taxation, would have conferred on him a still higher reputation if we had been sure that it had been prompted by an enlightened desire of the public good, unassisted by blind resistance to change, or by well-founded resentment against the Crown.

Coke's successor, Montague, need not detain us long. The only remarkable event of his Chief-Justiceship was his having to pronounce sentence on Sir Walter Raleigh. The concluding passage of his address to the prisoner is very striking: —

'I know you have been valiant and wise, and I doubt

not but you retain both these virtues, which now you shall have occasion to use. Your faith has heretofore been questioned; but I am satisfied that you are a good Christian, for your book, which is an admirable work, doth testify as much. I would give you counsel, but I know you can apply unto yourself far better counsel than I am able to give you. Yet, with the good Samaritan in the gospel, who, finding one in the way wounded and distressed, poured oil into his wounds and refreshed him, so will I now give unto you the oil of comfort; though (in respect that I am a minister of the law) mixed with vinegar. Fear not death too much nor too little — not too much, lest you fail in your hopes — nor too little, lest you die presumptuously. The judgement of the court is, *that execution be granted*; and may God have mercy on your soul!'*

Passing over his undistinguished successor, Ley, we proceed to Chief Justice Crewe, whom Lord Campbell properly designates as 'a perfectly competent and thoroughly honest Chief Justice.' He seems to have been an admirable specimen of an accomplished civilian of the 17th century. Mild, but yet resolute, fond of heraldry and genealogy, and, as may be inferred from the magnificent mansion which he erected at Crewe, of architecture; deeply imbued with the feelings and associations, perhaps we might call them the prejudices, which often accompany ancient descent, and devoting the whole force of a powerful intellect and of unwearied perseverance to one great

* Vol. i. p. 357.

object, the restoration of the splendours of the family of Crewe. His opinion on the Oxford Peerage Case, in which he preferred a remote male heir to a nearer female, illustrates well both the man and the times. It might figure in the 'Romance of the Peerage.'

'This great and weighty cause, incomparable to any other of the sort that hath happened at any time, requires much deliberation and solid and mature judgement to determine it. Here is represented to your lordships *certamen honoris*, of illustrious honour. I heard a great peer of this realm and a learned man say, when he lived, there is no king in Christendom hath such a subject as Oxford. And well might this be said, for De Vere came in with the Conqueror, being then Earl of Guynes; shortly after the Conquest he was made Great Chamberlain by Henry I., the Conqueror's son, above 500 years ago. By Maud, the Empress, he was created Earl of Oxford, the grant being Alberico Comiti, so that he was clearly an Earl before. He was confirmed and approved by Henry Fitz-Empress, Henry the Second. This great honour, this high and noble dignity, hath continued ever since in the remarkable surname of De Vere, by so many ages, descents and generations, as no other kingdom can produce such a peer in one and the selfsame name and title. I find in all this time but two attainders of this noble family, and those in stormy times, when the government was unsettled, and the kingdom in competition.

'I have laboured to make a covenant with myself, that affection may not press upon judgement; for I suppose

there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of a house so illustrious, and would take hold of a twig or twine thread to uphold it. And yet Time hath his revolutions; there must be a period and an end to all temporal things —*finis rerum*— an end of names and dignities, and whatsoever is terrene; —and why not of De Vere? — for where is BOHUN? Where is MOWBRAY? Where is MORTIMER? Nay, which is more, and most of all, where is PLANTAGENET? They are entombed in the urns and sepulchres of mortality! Yet let the name of De Vere stand so long as it pleaseth God.'*

Could such a speech be made now? We think not. The enthusiasm of the Chief Justice was kindled, as might perhaps have been expected from his heraldic and genealogical pursuits, not by the great deeds of the De Veres, but by the antiquity of their descent. He venerated them as we venerate an ancient oak which has seen the rise and fall of thirty generations of short-lived men. *Now* mere antiquity of birth, that is to say, descent from a family which has possessed great wealth during many centuries, has ceased to be reverenced. We admire it, as we admire every thing which we very seldom meet with, but by itself it excites no stronger feeling. If indeed it be added to great personal distinction, the union of the two is imposing. When we see the House of Lords led, as it scarcely ever was led before, by one whose nobility is as old as that of the De Veres, we are struck by the combination of two

* Vol. i. p. 373.

sources of illustration, each of which, even alone, is very rare. But an ancient name, unsupported by personal merits, is now almost valueless.

Sir Randolph Crewe followed Coke's glorious example in declaring the unlawfulness of arbitrary taxation and imprisonment. Like Coke, he was dismissed; like him, he felt deeply, more deeply than it is easy for us to conceive, the loss of his office; and, like him, he made a strong effort to recover it. But it was the effort of a much loftier virtue and of a much less vigorous will. Coke strove to influence Buckingham, first by his hopes and afterwards by his fears: first by surrendering his daughter and her vast expectations to Sir John Villiers; and afterwards, when that had failed, by leading the first regular parliamentary opposition of which an English House of Commons was the scene. Crewe tried to propitiate the favourite merely by respectful argument and entreaty. Lord Campbell thinks his letter to Buckingham most creditable. It appears to us pitched in too low a key. As a specimen of the humility, we had almost said the servility, with which a great man then addressed a still greater man, we extract a portion of it, with its many strange grammatical errors:

'My duty most humbly done to your grace, to read the misfortune of a poor man herein, and take them into your noble thoughts, whose case is considerable. I have lived almost two years under the burden of His Majesty's heavy displeasure, deprived of the place I held, and laid aside as a person not thought of, and unserviceable, whereof I have been soe sensible, that ever since living at my house att

Westminster, I have not sett my foot into any other house there or at London (saving the house of God), but have lived private and retired as it best became me.

'I did decline to be of this late Parliament, distrusting I might have been called upon to have discovered, in the public, the passages concerning my removal from my place, which I was willing should be lapped up in my own busome.

'I likewise took special care, if my name were touchit upon in the Comons house, that some of my friends there should doe their best to divert any further speech of me, for I alwaies resolved wholly to relie upon the King's goodness, who I did not doubt would take me into his princely thoughts, if your grace vouchsafed to intercede for me.

'I am now in the seventieth year of my age; it is the general period of man's life, and my glass runs on apace. Well was it with me when I was King's serjeant, I found profitt by it; I have lost the title and place of Chiefe Justice. I am now neither the one or other; the latter makes me uncapable of the former, and since I left the Chiefe's place, my losse has been little less than 3000*l.* already.

'I was by your favour in the way to have raised and renewed in some measure my poore name and familey, which I will be bold to say hath heretofore been in the best ranke of the famileys of my country, till by a general heir the patrimony was carried from the male line into another sirname, and since which time it hath been in a weak condition. Your grace may be the means to repair the

breach made in my poore fortune, if God soe please to move you, and you will lose no honour by it. Howsoever, I have made my suit to your noblenesse, and your conscience, for I appeal to both; and whatsoever my success be, I shall still appear to be a silent and patient man, and humbly submit myself to the will of God and the King. God be with your grace; He guide and direct you; and to His holy protection I commit you, resting ever

'A most humble servant to your grace,

(Signed) 'RANDULPH CREWE.

'Westminster, 28th Junii, 1628.'

When it is recollected that a short time afterwards Sir Randolph was able to purchase the great Crewe estates, and to build a magnificent palace which still, without addition or alteration, is one of the ornaments of England, it is not easy to sympathise with his lamentations over his 'poore name and familey,' and 'poore fortune.'

Crewe's successors during the stormy interval between his removal and the Commonwealth need not detain us. The only remarkable act of Hyde is his answer, when Charles asked whether, by assenting to the Petition of Right, he would lose the power, which that petition formally denied to him, of committing or restraining a subject without showing cause? 'Every law,' said Hyde, 'after it is made, hath its exposition, which it is left to the Courts of Justice to determine; and although the petition be granted, there is no fear of conclusion, as is intimated in

the question.'* These few words comprehend the whole theory of legal interpretation—an art which has never flourished so vigorously as in England. In some countries a law, of which the courts disapprove, is still executed until public opinion demands its repeal; in others advantage is taken of an interval in which it has not been called into force, and it is considered to have ceased by desuetude. Our judges acknowledge its validity, but blandly evade it by an interpretation. Peter, Jack, and Martin, sitting in conclave to expound their father's will, were timidly scrupulous when compared to an English Bench.

Heath, the last of Charles's Chief Justices, was one of the most respectable, for he was a conscientious ultra-royalist.

'He read law and history,' says Lord Campbell, 'with the preconceived conviction that the king of England was an absolute sovereign, and converted all he met with into arguments to support his theory. One convenient doctrine solved many difficulties; he maintained that Parliament had no power to curtail the essential prerogatives of the crown, and that all acts of parliament for such a purpose were *ultra vires*, and void. There is no absurdity in this doctrine, for a legislative assembly may have only a limited power, like the Congress of the United States; and it was by no means so startling then as now, when the *omnipotence of Parliament* has passed into a maxim.' †

* Vol. i. p. 384. † Vol. i. p. 409.

We are inclined to differ from Lord Campbell, and to believe that Heath's doctrine was as absurd as it was mischievous. It is true that a legislative body may have only a limited mission. The Poor Law Commissioners, in respect of their power to issue general rules, and the Equity Judges, in respect of their power to make orders in Chancery, are legislative bodies, with narrowly restricted powers. The Assemblies in our colonies have a much wider field, but still there are bounds to it. All these, however, are subordinate bodies. So is the Congress of the United States: it is appointed for certain special purposes, and when it has attempted to go further the judges have declared its acts unconstitutional and void. But a legislative body which has no superior, which represents the will of the nation, like the Convention of the United States or the British Parliament, must be omnipotent. Every independent nation has a right to make its own laws—every successive generation of such a nation has a right to alter those laws. To deny this is to maintain that those who inhabit a given territory in one century have a right to prescribe rules to those who are to inhabit it in all future centuries. It is to say that the legislation of barbarians is to govern their civilised descendants, that that of the ignorant is to govern the instructed, that that of the dead is to govern the living. The only plausible theory in favour of an unalterable monarchy is divine right. All human rights are necessarily transitory.

As far as the appointment of judges is concerned, the Commonwealth was a sunny interval between storms. Cromwell was just and conscientious. He hated advocates indeed, as the founder of a revolutionary government necessarily must do; he despised their scruples, and saw through the absurdity of many of the forms which they worshipped; he even expressed rather indecorously his want of reverence for Magna Charta—but he felt the necessity of having the bench well filled, and showed his usual sagacity in the choice of judges. Rolle, however, the most eminent of the judges of this period, was not made by him, but by the Long Parliament. Lord Campbell has inserted his judgement in the case of Don Pantaleon Sa, who, though secretary to the Portuguese ambassador, was executed for avenging a supposed insult by assassination. It is an admirable piece of legal reasoning, and has established both the law which it lays down, that the attendants of an ambassador are privileged only in civil cases, and also the law which it suggests, that the foreign minister himself is exempt from the jurisdiction of the criminal courts of the country to which he is accredited.

Lord Campbell remarks, that the administration of criminal justice during the Commonwealth was purer and fairer than it had been for a long period before, or than it became under the Restoration. During the Commonwealth the prevailing motive was religion; and religion, though in ill-regulated minds it may produce cruelty towards those of different opinions, seldom tempts to fraud or chicanery; while, on subjects unconnected with faith, it

prompts to justice and fair dealing. Still, however, many of the old oppressions remained: prisoners were denied the assistance of counsel, even as to legal questions arising on the evidence, unless the Court, in its discretion, thought fit (which it seldom did) to grant it. The witnesses in their favour were not allowed to be sworn, and they had no means of compelling their attendance. Improper evidence was admitted, though not so freely as before; juries were packed; and for the trial of those with whom juries could not be trusted, a High Court of Justice was created, consisting of about 150 persons, any seventeen or more of whom were a quorum, not subject to challenge, deciding by a bare majority, and combining the functions of judge and jury. At the same time it is observable that this tribunal, however unfairly constituted, was not more so than the court of the Lord High Steward for the trial of peers was before the Revolution.

One of the most interesting of the trials before this High Court is that of Christopher Love. He was a Presbyterian divine of great eminence, and was accused of having corresponded with the Scotch Presbyterians, who acknowledged Charles the Second; and of having, in the words of the charge, conspired 'to raise up foes against the present government of this nation since the same hath been settled in a commonwealth and free state, without a King and House of Lords.' The greater part of the evidence was mere hearsay; of that which directly criminated the prisoner, some was extorted from persons under the same accusation, under a promise of pardon, 'if they dealt

ingenuously;' and other portions were mere assents from the witnesses to leading questions. The spirit and presence of mind of Love were remarkable. In the beginning of the trial he was urged by the Lord President to imitate Achan—to confess and glorify God; and by the Attorney-General, to admit that he had corresponded with the Scotch. His answer is admirable: —'I will admit of nothing. I have so much of a Christian in me that I will deny nothing that is proved to be true, and so much of an Englishman that I will admit of nothing that is seemingly criminal.' *

As was the case with almost all (we believe that there was but one exception) who came before that court, he was convicted. His speech from the scaffold, to which he was accompanied by Calamy and by two other eminent Presbyterian members, is a magnificent death song:—

'I am not only a Christian and a preacher, but, whatever men judge, I am a martyr. I speak it without vanity. Would I have renounced my covenant, and debauched my conscience, and ventured my soul, there might have been hopes of saving my life; but, blessed be my God, I have made the best choice—I have chosen affliction rather than sin; and therefore welcome scaffold, and welcome axe, and welcome block, and welcome death, and welcome all, because it will send me to my Father's house. I magnify his grace, that though now I come to die a violent death, yet that death is not a terror unto me—through the blood of sprinkling, the fear of death is taken out of

* 5 State Trials, p. 53.

my heart. God is not a terror unto me, therefore death is not dreadful to me. I have now done; I have no more to say, but to desire the help of all your prayers, that God would give me the continuance and supply of divine grace to carry me through this great work that I am now about; that as I am to do a work I never did, so I may have a strength I never had; that I may put off this body with as much quietness and comfort of mind as ever I put off my clothes to go to bed. I am now going to my long home, and you are going to your short homes; but I will tell you I shall be at home before you; I shall be at my Father's house before you will be at your own houses. I am now going to the heavenly Jerusalem, to the innumerable company of angels, to Jesus the mediator of the new covenant, to spirits of just men made perfect, and to God the judge of all, in whose presence there is fullness of joy, and at whose right hand there are pleasures for evermore. I conclude with the speech of the apostle, "I am now to be offered up, and the time of my departure is at hand; I have finished my course—I have fought the good fight—I have kept the faith—henceforth there is a crown of righteousness laid up for me; and not for me only, but for all them that love the appearing of our Lord Jesus Christ," through whose blood, when my blood is shed, I expect remission of sins and eternal salvation. And so the Lord bless you all!'*

Lord Campbell passes over with merited brevity the

* 5 State Trials, p. 262.

three first chief justices of the Restoration—Foster, Hyde, and Kelynge; when we come to a chief justice, a deserved favourite—Sir Matthew Hale. He had the advantage, says Lord Campbell, of being born in the middle rank of life, and of depending on his own exertions for distinction. Hale was so great and so good—the qualities which we love, which we respect, and which we admire, were so united in his character—that it is difficult to wish that his parentage or his education had been other than they were. Any alteration of the circumstances in which he was placed might have impaired a virtue or even have introduced a vice. Still we cannot help sometimes regretting that he enjoyed what Lord Campbell calls the advantage of obscure birth. If, like some of his most distinguished predecessors, Gascoigne, Fortescue, Dyer, or Crewe, or, like his great successor Murray, he had entered life among the high-born and the refined, he probably would have escaped several weaknesses and one or two considerable errors. He would not have passed an ascetic life, avoiding the great and the learned. He would not, by excluding his children from good society, have contaminated them by bad; and, above all, he probably would not have married his maid. If he had lived in the world, it is possible that both his poetry and his philosophy would have been better; and that at the same time he would have prided himself on them less. Theology might perhaps have less occupied his thoughts; but, on the other hand, he might have avoided the superstition which is perhaps the principal blot on his generally illustrious

fame. It would not have been left to Roger North to insinuate a comparison so much to the advantage of Lord Guildford, on the trial of witches.

'He began,' Lord Campbell tells us, 'with the specious but impracticable rule of never pleading except on the right side, which would make the counsel decide without knowing either facts or law, and would put an end to the administration of justice. "If," says Burnet, "he saw a cause was unjust, he would not meddle further in it but to give his advice that it was so; if the parties after that would go on they were to seek another counsellor, for he would assist none in acts of injustice." He continued to plead with the same sincerity which he displayed in the other parts of his life, and he used to say, "It is as great a dishonour as a man is capable of to be hired for a little money to speak against his conscience."'*

It must be recollected that moral certainty often co-exists with legal doubt. Every system of laws contains rules of evidence, under which, in certain cases, a certain amount or a certain kind of testimony is required or excluded. Thus in England two witnesses are necessary in cases of treason; in Germany two witnesses of one description or four of another are required to prove every serious accusation. In England, again, the evidence of husband or wife for or against the other is excluded; and so are privileged communications. In obedience to such a rule the judge may often be required to discharge a prisoner of whose guilt he is convinced. A counsel may be bound

* Vol. i. p. 519.

to call on a jury to acquit a man who has confessed to him his crime. In fact, the issue in a criminal trial is not whether the prisoner has or has not committed a certain act, but whether there is legal evidence that he committed it.

In civil cases, indeed, the actual truth is often the subject of enquiry, and the court has to decide, frequently on slight indicia, between conflicting probabilities, or even between conflicting improbabilities. In such a case an advocate would not be justified in supporting a story which, from private information, he knew to be false. This would turn him into the legal prostitute which Bentham calls him. Erskine could scarcely have made his great speech in the case of Day *v.* Day, if Mrs. Day had confessed to him that the child whom she produced as her son had been bought from a beggar.

Such difficulties, however, are rare. It is only a prisoner that unbosoms himself to his lawyer; a party in a civil suit keeps his own secrets. The criminal feels relief in confessing his evil deed; the fraudulent plaintiff or defendant has not yet completed his: the time of remorse is to come. Where matters of fact are not in dispute, it is seldom that the cause of either litigant can be called just or unjust. The questions generally are, whether, according to the rules of law, a given property belongs to the one or to the other, or what amount of damage one has inflicted on the other. In such cases a man of the most sensitive conscience may obviously take either side. The difference between the honourable and

the unscrupulous counsel shows itself not in the causes which he undertakes, but in the manner in which he conducts them. An honest advocate will not pledge his belief to what he knows to be false; he will not throw suspicion on those whom he knows to be innocent; he will not lay down rules of law which he knows to be inventions of his own. He will feel, with Hale, that 'it is as great a dishonour as a man is capable of, to be hired, for a little money, to speak against his conscience.'

Considering the remarkable character of Scroggs, his great talents and his atrocious crimes, and the interest which belongs to the strange national delusion which he encouraged by his judicial murders, it may be thought that Lord Campbell has passed him over rather slightly. Probably he thought that Scroggs and the Popish Plot had been sufficiently treated by Scott and Macaulay, and that it was not advisable to reproduce subjects which had been already dwelt on by the greatest novelist and the most brilliant historian of modern times. We shall imitate his prudence: but one of the trials at which Scroggs presided was marked by an incident which may be worth disinterring from the State Trials.

Gavan, a Jesuit, together with several of his brethren, was indicted for having on the 24th of April, 1678, plotted to effect the king's death. Oates swore that some time, he would not say on what day, in the subsequent July, he met Gavan in London, and that they then talked over the progress of the Plot, or, as he called it, the Design. Gavan

protested that he was not in London in either April or July. He clearly established an alibi in April, but the evidence as to his absence during the whole of July was not satisfactory. There being only the oath of Oates on one side and the denial of the prisoner on the other, he said that he would submit, by way of ending the controversy, only one demand. On Scroggs enquiring what it was, Gavan replied, '"You know, that in the beginning of the Church (this learned and just court must needs know that), for 1,000 years together it was a custom, and grew to a constant law, for the trial of persons accused of any capital offence, where there was only the accuser's oath and the accused's denial, for the prisoner to put himself upon the trial of ordeal, to evidence his innocency."'* This is probably the last time that such a request was seriously made to an English court; for though Thornton, in 1819, demanded the ordeal by battle, that was merely a special pleader's trick to defeat an appeal of murder: and the same was the case with a contemporary demand made in Ireland, mentioned by Mr. Phillips in his 'Life of Curran.' But Gavan appears to have made the proposal in perfect sincerity, and must have expected, therefore, a miraculous intervention in his favour — or at least a fairer chance of escape than would have been afforded to him by Scroggs.

The successor of Scroggs, C. J. Pemberton, is one of the few among Lord Campbell's heroes whose story is interesting from its vicissitudes. He was a man of family and of

* State Trials, vol. vii. p. 382.

fortune, to which he had the misfortune to succeed as soon as he came of age. In two years he had not only spent it, but was a prisoner in the Fleet for debt—and, as the law then stood, was likely to remain a prisoner during the remainder of his life.

'He had,' says Lord Campbell, 'not been sober for many weeks, and it was some time before he could fully understand where he was and what had befallen him. He used afterwards to relate, "that some supernatural influence seemed to open his eyes, to support him, and to make a new man of him." He contrived to get a small dismal room for his own use without a chum, and in this he shut himself up. He tasted nothing but the bread and water which were the prison allowance; his share of some charitable doles arising from fees on the last day of term, and other such sources, he gave away to others. He was able to borrow books by the kindness of a friend of his father's who came to visit him. He devoted a certain number of hours daily to the classics and to the best English writers; the rest to the Year Books, to the more modern Reports, to the Abridgements, and to the compiling of a huge Common-place Book for himself, which might have rivalled Brooke, Rolle, and Fitzherbert.

'His mode of life was observed with amazement and admiration by his fellow-prisoners, who, from time to time, came to consult him in their own affairs, particularly about their disputes with their creditors. They, by and by, called him the "Councillor" and the "Apprentice of the Law," and such as could afford it insisted

on giving him fees for his advice. With these he bought the books which it was necessary that he should always have by him for reference. To add to his fund for this purpose, he copied and he drew law papers for the attorneys, receiving so much a folio for his performances. By these means he was able to pay off some of the smallest and most troublesome of his creditors, and to compromise with the others. Burnet, whose love of the marvellous sometimes betrays him into exaggeration, although his sincerity may generally be relied upon, says, that Pemberton "lay *many years* in gaol;" but according to the best information I have been able to obtain, the period did not exceed five years.'*

Before his imprisonment he had become a member of the Inner Temple. On his release, he completed his terms and was called to the Bar, and rapidly rose into great business. In 1679 he was made a puisne judge of the Court of King's Bench. But after a year's experience he was found not sufficiently ductile, was degraded in 1680, and, at the age of fifty-three, returned to the Bar. Scroggs became, however, intolerable to the public: it was thought necessary not only to dismiss him, but to give him a respectable successor; and in 1681 Pemberton was appointed Chief Justice of the King's Bench. Again, however, he disappointed his patrons. He would not promise his assistance in disfranchising the City of London, and in 1782 he was removed from the King's Bench to the Common Pleas. While Chief Justice of the

* Vol. ii. p. 27.

Common Pleas, the Rye-House Plot was discovered, and he was placed at the head of the Commissioners before whom the real and the supposed conspirators were to be tried. Again, however, he was found too fair for the last Administration of Charles II. He gave Lord Russell some chances of acquittal, was punished by dismissal from the Common Pleas, and had again to return to the Bar. It is to this dismissal that he owes his fame; for it is not as a judge, but as the leading counsel for the Seven Bishops that he is remembered. The courage, the skill, the learning, and the eloquence which he displayed in perhaps the most important trial that ever occurred in England, have secured to him what falls to the lot of few advocates — a place in history.

They did not, however, secure to him the favour of the new Whig government. Though he had not been servile enough for the Tories, he had been too servile for the Whigs — at least they thought so. He was not restored to the Bench; and was even imprisoned by the House of Commons, as having been guilty of a breach of privilege in overruling, when Chief Justice, a plea that a committal had been made by the authority of the House. His imprisonment ceased with the prorogation of March 1690. He must then have been in his sixty-fifth year. But such was his vigour of mind and body, that he resumed his labours at the Bar, and was counsel for Sir John Fenwick in 1696 — forty-six years from the time when he was called to the Bar.

Of the passages which Lord Campbell has quoted from

his pleadings and his judgements, the most remarkable is the sentence which he pronounced on Plunket, the Roman Catholic archbishop of Armagh—a man whose conviction is one of the worst stains on English justice, and whose death was one of the worst crimes of Charles.

'You have done as much as you could to dishonour God in this case; for the bottom of your treason was, your setting up your false religion, than which there is not anything more displeasing to God or more pernicious to mankind;—a religion which is ten times worse than all the heathenish superstitions; the most dishonourable and derogatory to God and his glory, of all religions or pretended religions whatsoever; for it undertakes to dispense with God's laws, and to pardon the breach of them: so that, certainly, a greater crime cannot be committed against God, than for a man to encourage its propagation. I do now wish you to consider that you are near your end. It seems that you have lived in a false religion hitherto; but it is not too late at any time to repent. I trust that you may have the grace to do so. In the mean time, there is no room for us to grant you any kind of mercy, though I tell you we are inclined to pity all malefactors.'

'*Archbishop.*—"If I were a man such as your lordship conceives me to be, not thinking of God Almighty, or heaven, or hell, I might have saved my life; for it has been often offered to me, if I would confess my own guilt and accuse others; but, my Lord, I would sooner die ten thousand deaths."

'*Chief Justice.*—"I am sorry to see you persist in the principles of that false religion which you profess." '*

That a chief justice from the Bench should thus have denounced a religion which, until only 150 years before, had been acknowledged by all Christendom, and was then acknowledged by three-fourths of it—to which we owe our comparative immunity from the cruelties, the superstitions, and the impurities of Paganism—to which More had been a martyr, and which Pascal, Fénelon, and Bossuet, then professed and adorned;—that he should have dared to proclaim such a religion, ten times worse than the worst heathenism, is a proof of the intolerance of the speaker, and, we must add, of the audience, which nothing but a contemporary record would enable us to credit.

The first of Pemberton's successors who deserves to be dwelt on is Holt—a name venerable in English jurisprudence. Lord Campbell prefaces his description of the merits which Holt possessed by a catalogue of the demerits which he did not possess. It is obviously drawn from long and varied experience, and our readers will be obliged to us for our extract from it.

'According to the ancient traditions of Westminster Hall, the anticipation of high judicial qualities has been often disappointed. The celebrated advocate, when placed on the Bench, embraces the side of the plaintiff, or of the defendant with all his former zeal, and, unconscious

* Vol. ii. p. 38.

of partiality or injustice, in his eagerness for victory becomes unfit fairly to appreciate conflicting evidence, arguments, and authorities. The man of a naturally morose or impatient temper, who had been restrained while at the Bar by respect for the ermine, or by the dread of offending attorneys, or by the peril of being called to a personal account by his antagonist for impertinence — when he is constituted a living oracle of the law — puffed up by self-importance, and revenging himself for past subserviency, is insolent to his old competitors, bullies the witnesses, and tries to dictate to the jury. The sordid and selfish practitioner, who, while struggling to advance himself, was industrious and energetic, having gained the object of his ambition, proves listless and torpid, and is quite contented if he can shuffle through his work without committing gross blunders or getting into scrapes. Another, having been more laborious than discriminating, when made a judge, hunts after small or irrevelant points, and obstructs the business of his Court by a morbid desire to investigate fully, and to decide conscientiously. The recalcitrant barrister, who constantly complained of the interruptions of the Court, when raised to the Bench forgets that it is his duty to listen, and be instructed, and himself becomes a by-word for impatience and loquacity.' *

In order to diminish the chance of mis-selection, in every country except Great Britain, and the countries which have borrowed their institutions from us, the

* Vol. ii. p. 134.

judges are taken, not from among the advocates, but from a class of men who have made the Bench, as distinguished from the Bar, their profession, who have generally been prepared for it by being first admitted to attend as assessors, and then intrusted by the court to draw up reports for its information, and who gradually rise from a lower to a higher seat in the judicial hierarchy.

This system has many advantages. Instead of entering late in life on new and arduous duties, the continental judge has been trained to them by practice and example. Since he is appointed for having displayed not forensic but judicial qualities, that he should disappoint expectation must be comparatively rare; and, lastly, the public purchases the services of an eminent lawyer by a moderate salary. The highest judicial officer in France receives only 1,200*l.* a year, while there are advocates who make 4,000*l.* or 5,000*l.* If it were necessary, as it is with us, to tempt a first-rate advocate, the salary must be at least doubled.

On the other hand, the foreign system degrades the Bar. It is reduced to a mere trade, without hope of the honours, the high station, and the dignified retirements which reward it with us. The profession of an advocate, therefore, is one which, on the continent, few gentlemen adopt. When we consider how vast is the trust which must be reposed in the Bar, this is an enormous evil. Again, it prevents the convenient ostracism by which a preeminent advocate may be removed from the scene of his triumphs.

Many of those triumphs must be mischievous. Many a wrong verdict is extorted from a jury — many a judge is seduced into adopting plausible but unsound law — by the eloquence, or the address, or the authority of a counsel of unrivalled powers among his contemporaries.

On the other hand, on trials by jury, in which the real judges are the jurymen, and the person called a judge is a mere assessor, qualities are required from the assessor different from those which are necessary to a single-seated judge. He has to point out to the jurymen what their verdict ought to be, and to lead them to adopt his views. This demands forensic talents and habits, and will be best effected by a man who has practised the arts of persuasion.

Holt had all the merits which could be expected or even desired in a judge selected under either system. Lord Campbell truly says—

'From his start as a magistrate he exceeded the high expectations which had been formed of him, and during the long period of twenty-two years he constantly rose in the admiration and esteem of his countrymen. To unsullied integrity and lofty independence he added a rare combination of deep professional knowledge, with exquisite common sense. According to a homely but expressive phrase, "there was no rubbish in his mind." Perhaps the excellence which he attained may be traced to the passion for justice by which he was constantly actuated. This induced him to sacrifice ease, and amusement, and literary relaxation, and the allurements of party, to submit to tasks the most dull, disagreeable, and revolting, and

to devote all his energies to one object, ever ready to exclaim—

> ' "Welcome business, welcome strife,
> Welcome the cares of ermined life;
> The visage wan, the purblind sight,
> The toil by day, the lamp by night,
> The tedious forms, the solemn prate,
> The pert dispute, the dull debate,
> The drowsy bench, the babbling hall—
> For thee, fair Justice, welcome all."

'The lustre of his fame in latter times has been somewhat dimmed by our being accustomed to behold judges little inferior to him; but we ought to recollect that it is his light which has given splendour to these luminaries of the law. During a century and a half this country has been renowned above all others for the pure and enlightened administration of justice; and Holt is the model on which in England the judicial character has been formed.' *

The merit which most struck the contemporaries of Holt was his conduct as a criminal judge. 'The prisoner before him,' said the "Tatler," 'knew that, though his spirit was broken with guilt, and incapable of language to defend himself, his judge would wrest no law to destroy him, nor conceal any that would save him.' When we recollect the insolence, the levity, the violence, the fraud, the corruption, and even the cruelty of the judges who immediately preceded him, mere impartiality would have been a glorious contrast; and in him it was united to

* Vol. ii. p. 135.

great knowledge, intelligence, patience, and even kindness. The reports are full of testimonies to his candour. 'Interrupt me,' he said to Lord Preston, 'as much as you please, if you think that I do not sum up right. I assure you I will do you no wrong willingly.'—'No, my Lord,' answered the prisoner; 'I see well enough that your Lordship would not.'

One of the most remarkable of the private trials before him was that of Henry Harrison for the murder of Dr. Clenche. A woman with whom Harrison was intimate owed money to Clenche, and was threatened by him with legal proceedings. Harrison, assisted by an accomplice, who does not appear to have been detected, inveigled Clenche at night into a hackney-coach, drove about for an hour and a half, sent off the coachman on a message, and disappeared during his absence, leaving Clenche strangled in the carriage. After a long trial, and an unfavourable charge, he was convicted. When brought up for judgement, to the usual question, 'What have you to say for yourself why judgement should not be given against you to die, according to law?' he answered, 'I must needs acknowledge that I have been tried before the best of judges, my Lord Chief Justice Holt. I expect no mercy here and only humbly desire that I may have twelve days, in order to my better preparation for death.' Such a testimony from a man whose conviction Holt had just actively promoted, and who had no longer anything to hope or to fear, is remarkable.

Lord Campbell, however, disapproves of one part of his conduct.

'It is observable,' he says, 'that even under Holt criminal trials were not always conducted with the regularity and forbearance which we now admire. For the purpose of obtaining a conviction when he believed the charge to be well-founded, he was not very scrupulous as to the means he employed. To the end of his life he persevered in what we call "the French system," of interrogating the prisoner during the trial, for the purpose of obtaining a fatal admission from him or involving him in a contradiction. Thus in the case, which made a noise all over Europe, of Haagen Swendsen, indicted capitally for forcibly carrying off an heiress and marrying her, the prisoner having asserted that, before he carried her off, she had squeezed his hand and kissed him, the Chief Justice asked, "If she was consenting, why then did you force her to the tavern and marry her by a parson you had provided for that purpose?" the prisoner answered, "She married me with as much freedom as there could be in woman." But he was convicted and executed.' *

A more remarkable instance occurs in the trial which we have already mentioned; and in which the prisoner, so interrogated, acknowledged, nevertheless, that he had been tried by the 'best of judges.' Harrison had set up an alibi, and had brought some persons to swear that he was in a tavern playing at cards from nine to half-past ten, the period during which the murder was committed. It had been proved that a little before nine o'clock that evening a Mr. Humston had asked him to supper, and that he had

* Vol. ii. p. 174.

refused, on the 'ground that a person was waiting for him in the street on a matter of business.' When the evidence had been gone through, the following dialogue between Holt and the prisoner took place: —

'*L. C. J.* "It behoves you to give an account of these things. Why did you say that you had extraordinary business? Give some account what your business was, and who that gentleman was that stayed for you in the street. When Mr. Humston desired you to stay and sup with him, what hindered you from accepting his invitation? Now we would have you to consider of these things, and give an answer to them, for it much concerns you so to do."

'*Harrison.* "My Lord, I was about to go to Basingstoke to a gentleman that owed me money, one Mr. Bulling; but I could not get money to go."

'*L. C. J.* "Prove that you were to go into the country."

'*Harrison.* "My Lord, I cannot prove that now, except I could have sent to Basingstoke."

'*L. C. J.* "That you should have done before now. Why did you not stay with Mr. Humston, when he invited you to sup with him? You might have been better entertained there, than by going among strangers to play at cards for a penny a corner at an ale-house."

'*Harrison.* "My Lord, I was unwilling to stay, because he had strangers with him."

'*L. C. J.* "What if he had? You are not such a bashful man that you could not sup with strangers."

'*Harrison.* "My Lord, Mr. Rowe was accused with me."

'*L. C. J.* "What if he was? He was under some suspicion, and he hath made it appear where he was at the time the fact was committed, and now he is discharged."' *

But is this practice really objectionable? It may easily be carried to excess, as it is in Germany, where a prisoner may be interrogated once or twice a week for years, and punished whenever an answer given in 1850 differs from one given in 1845; and as it is in France, where a trial often degenerates into a contest of skill between the judge and the prisoner, which must endanger judicial impartiality. But to the extent to which it was used by Holt, it appears to us to be one of the best means for effecting the two great objects of procedure, the manifestation of innocence, and the detection of crime. To an innocent man what can be more useful than that the judge should state to him the strong points in the case against him, should suggest to him the appearances which he has to explain, should point out to him the seeming discrepancies in his defence, and should do all this before the defence is concluded? It must be done when the judge sums up at the end of the trial; and, supposing the prisoner to be innocent, it is far better for him that it should be done while he has still the means of answering. The more searching the enquiry the more probable it must be that truth will be the result. Of course, for this very reason, it is unfavourable to the guilty; but to regret this would be to treat a trial as a solemn game, to be played out according to certain technical rules,

* State Trials, vol. xii. p. 895.

invented for the purpose of prolonging the interest and keeping the issue uncertain.

With the lay world Holt's fame depends chiefly on his contests with the two Houses of Parliament. In resisting the House of Lords he was clearly in the right. They required him to give to them his reasons for having made a particular decision. 'Let it be brought,' he answered, 'before your lordships by a writ of error, and I shall be bound, if you desire it, to state the grounds on which that decision rests, as I am bound to give my opinion on any other legal matter. But while my decision remains unappealed from I refuse to answer any questions concerning it.' The House of Lords prudently acquiesced; and as the decision itself related to a matter of no public importance, it is remarkable that Holt's conduct should have excited so much interest. 'The public,' says Lord Campbell, 'had taken strongly the side of the Chief Justice, and his health was given with enthusiasm at all public meetings throughout the kingdom.'

His contest with the House of Commons was of a different kind. He had most properly supported an action brought by Ashby, a burgess of Aylesbury, against the returning officer of the borough, for wantonly or corruptly refusing to admit his vote; and his judgement, though overruled in his own court, had been maintained in the House of Lords. The Commons thereupon resolved, 'That the qualification of an elector is not cognisable elsewhere than before the Commons: that Ashby was guilty of a breach of privilege: and that whosoever shall in future commence such an action, and all attorneys or

counsel soliciting or pleading the same, are guilty of a breach of the privileges of this House.' Several such actions were brought, and the plaintiffs were committed by the House to Newgate; the cause of commitment expressed in the warrant being, 'That they had been guilty of commencing and prosecuting actions of law for not allowing their votes in the election of members to serve in Parliament, contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges, of the House of Commons.' The prisoners sued out writs of habeas corpus in the Queen's Bench. The gaoler produced them, and in his return set out the warrant. Holt held that they ought to be set at liberty, on the grounds that the cause of commitment was clearly insufficient, and that, as it was expressed in the warrant, the court was bound to take notice of its insufficiency, and therefore bound to treat the commitment as illegal. The other judges, however, held that they could not question the validity of a commitment by the House of Commons; so that the prisoners were remanded. Steps were taken to bring the decision of the Court of Queen's Bench, by writ of error, before the House of Lords; the Commons committed to Newgate the counsel who had argued in support of the application; and when the two Houses seemed likely to come into collision, the dispute was cut short and the prisoners were set free by a prorogation.

Our limits warn us that we must compress. We have not dwelt therefore on Raymond, or on Lee, or on Ryder,

or on Willes, or even on Wilmot. An interesting comparison might be drawn between the two last. Both were men of talent and learning, both rose to high power and distinction, and both might have risen still higher. Both, in fact, refused the Great Seal; and yet the ruling passions of the two men were not only different, but opposed. Willes missed the Chancellorship by vanity and ambition; Wilmot by modesty and timidity. Lord Campbell has briefly, but effectively, characterised each of them. We will extract his bold and judicious remarks on Wilmot: —

'We must place him far above those who have been tempted by ambition to mean or wicked actions, but we cannot consider his character as approaching to perfection — for he was more solicitous for his own ease than for the public good. By becoming a representative of the people, he might have materially assisted the House of Commons. By accepting the Great Seal, he would have rescued the country from the incompetence of Bathurst. He was deterred not by any misgivings as to his own qualifications, or by any dislike to the political principles of those with whom he was to be associated in the cabinet, but by morbid hatred of conspicuous position, and by selfish love of tranquillity. He did not shun political strife, that he might make discoveries in science, or contribute to the literary fame of his country. The tendency of the tastes by which he was animated is to make life not only inglorious but useless.' *

* Vol. ii. p. 300.

'I now come,' continues Lord Campbell, 'to a man who, animated by a noble ambition for power and fame, willingly acted a conspicuous part for above half a century; who was a great benefactor, as well as ornament, to his own times; and whose services to a distant posterity will be rewarded by his name being held in honoured remembrance.' This is, of course, Lord Mansfield — the hero, and deservedly the hero, of Lord Campbell's biographies.

When high eminence has been reached, it is interesting not only to trace the course which has been pursued, but to enquire into the qualifications which enabled it to be pursued; to enquire what were the accidents of birth and education, what were the intellectual and physical powers, and what were the moral stimulants and restraints which drove the legal adventurer up the steep ascent, which lifted him over its precipices, and protected him from the dangers which beset as well those who press on too eagerly as those who linger in the race. Lord Mansfield himself attributed much to his birth and connections. 'My father,' he said, 'was a man of rank and fashion, and early in life I was introduced into the best company: to these advantages I chiefly owe my success.'* Lord Campbell calls this an ebullition of aristocratic insolence. 'The son,' he says, 'of an eminent attorney had an infinitely better chance of succeeding at the Bar, and of reaching the highest dignities in Westminster Hall, than the son of a poor Scotch peer, of descent however illustrious.'

As respects mere success at the Bar, we agree with

* Vol. ii. p. 302.

Lord Campbell. The influence of attorneys and the great and, we are sorry to say, the increasing nepotism, or fili-ism, which they naturally obey, give enormous early advantages to those who are allied to them. But men so connected and so pushed on seldom attain high political, or even high judicial, distinction. Early habits of business give them great adroitness and great familiarity with the details of law. They master the abstruse learning of 'Practice,' as a child masters a language, before they are old enough to be disgusted by its arbitrary intricacies and refinements. But a youth so employed seldom admits the acquisition of much political or philosophical knowledge. It generally stifles the wish for such knowledge. It is equally unfavourable to the habits, and manners, and language which fit a speaker to charm or to rule the fastidious audience of the Upper, or indeed of the Lower, House of Parliament.

When William Murray entered the House of Commons, he had studied, with a diligence which always must be rare, but now, we fear, is unheard of, the greatest works of the greatest masters of eloquence and style. He was familiar with ancient and modern history. He had learned ethics in Cicero, international law in Grotius, and jurisprudence in what was then its principal repository —the Corpus Juris Romani. He had drunk champagne with the wits. Pope was his intimate friend, and he must have been familiar with the ornaments of the brilliant circles which formed what has been called our Augustan age. He had a fine person, and the most

precious physical gifts that nature can confer on an orator—vigorous health and a clear, powerful, and pleasing voice. To all this must be added, the *prestige* of high birth, and the ease and confidence which that happy accident generally confers. His ruling passion was ambition; not the vulgar desire of high place, which led Didius to purchase the empire—not the higher but still selfish desire of power for its own sake, which has been the usual motive of usurpers and tyrants — but a wish, and, so far as it depended on himself, a determination, to obtain the means of conferring great benefits on mankind, and of earning great fame for himself — a passion which, like every other passion, may be inordinate and may be ill-directed, but is perhaps the noblest by which the human heart can be expanded. To these great qualities must be added unwearied, well-directed, and well-regulated diligence, and consummate prudence. To talents and advantages which would have given success to an idle man, he joined labour which would have made the fortune of a dull man. And he steered through the dangers of official life with a dexterity which is found only where there exists the rare combination of acute intellect, strong will, and cool passions.

We have said that Lord Mansfield's ambition was noble, but we must admit that it was mixed with humbler impulses. He was fond of money and of rank. He wished to be the founder of a great family. These are motives which, unless they are improperly powerful, unless they lead to some form of immorality, the strictest

moralist ought not to condemn. That they sometimes did mislead Lord Mansfield, we feel to be true; this was not, however, in his judicial, but in his political capacity. From the time that he became solicitor-general, in 1742, till the accession of William Pitt, in 1784, he acted with almost every successive administration. He withdrew, indeed, his support from Lord Rockingham and from Lord Shelburne; and though he sat in the same cabinet with the elder Pitt, he was one of the members whose opposition arrested the triumphs of the greatest war minister that England has ever known.

These are significant exceptions from the general rule. They show what was the current of his politics. It is impossible to suppose that a man of his knowledge and sagacity conscientiously supported a set of the worst administrations under which the country has ever suffered, and conscientiously opposed some of the best. The love of place and of patronage must have bound him to the Duke of Newcastle, Lord Bute, and Lord North. It would have been well for his fame, perhaps for his happiness, had he failed in extorting a peerage from George II. If, like his great predecessors Rolle, Hale, and Holt, he had abandoned political, when he entered on judicial, life, his splendour as a judge would not have been tarnished by his narrow-minded subservience as a statesman.

Without disguising, or even extenuating, Lord Mansfield's political defects, Lord Campbell has wisely left that part of his character in shade, and dwelt on his legal merits. Before proceeding to details, he gives this outline of what Lord Mansfield had to do and did:—

'He formed a very low, and, I am afraid, a very just, estimate of the Common Law of England which he was to administer. 'In the reign of George II. England had grown into the greatest manufacturing and commercial country in the world, while her jurisprudence had by no means been expanded or developed in the same proportion. The legislature had literally done nothing to supply the insufficiency of feudal law to regulate the concerns of a trading population; and the Common Law judges had, generally speaking, been too unenlightened and too timorous to be of much service in improving our code by judicial decisions.

'Hence, when questions necessarily arose respecting the buying and selling of goods — respecting affreightment of ships — respecting marine insurances — and respecting bills of exchange and promissory notes — no one knew how they were to be determined. Not a treatise had been published upon any of these subjects, and no cases respecting them were to be found in our books of reports. Lord Hardwicke had done much to improve and systematise equity—but proceedings were still carried on, in the courts of Common Law, much in the same style as in the days of Sir Robert Tresilian and Sir William Gascoigne. Mercantile questions were so ignorantly treated when they came into Westminster Hall, that they were usually settled by private arbitration among the merchants themselves. He saw the noble field that lay before him, and he resolved to reap the rich harvest of glory which it presented to him. Instead of proceeding by legislation, and attempting to

codify, as the French had done very successfully in the *Coustumier de Paris* and the *Ordinance de la Marine*, he wisely thought it more according to the genius of our institutions to introduce his improvements gradually by way of judicial decision. His plan seems to have been to avail himself, as often as opportunity admitted, of his ample stores of knowledge, acquired from his study of the Roman civil law, and of the juridical writers produced in modern times by France, Germany, Holland and Italy — not only in doing justice to the parties litigating before him, but in settling with precision, and upon sound principles, a general rule, afterwards to be quoted and recognised as governing all similar cases. Being still in the prime of life, with a vigorous constitution, he no doubt hoped that he might live to see these decisions, embracing the whole scope of commercial transactions, collected and methodised into a system which might bear his name.' *

After awarding in detail to Lord Mansfield due honour as the founder of the laws which now regulate insurance, paper currency, freight, and the government of the dependencies of the Crown, Lord Campbell comes to his decisions on real property. As a veteran lawyer he could scarcely avoid treating of Perrin and Blake, a case which had the merit or the demerit of giving rise to the most learned, the most ingenious, and the most disagreeable book which a student has to encounter — 'Fearne on Contingent Remainders.'

By the will which produced this celebrated case, a tes-

* Vol. ii. p. 402.

tator, *after declaring an intention that his devisee should not have power to affect the devised estate beyond the devisee's own life*, gave his property to his son John during his life, and, after his death, to the heirs of his body. If, instead of the words 'heirs of his body,' he had said 'to his first and other sons successively in tail, and, in default of such issue, to his daughters as coparceners in tail,' he would have used the proper words for effecting his intention: the son would have taken only for his own life; and the children of that son would have succeeded to the inheritance independently of their father, or, in legal language, by purchase. But according to a rule of law, called the rule in Shelley's case, where land is given to a person for life, and, after his death, to the heirs of his body, the latter words coalesce with the former words — they are held to be a mere extension of the purchaser's interest; and he is tenant in fee-tail, and may, by going through certain forms, become tenant in fee-simple; or, in other words, absolute owner.

Another rule of law, far more important than the rule in Shelley's case, is that in the interpretation of wills the intention of the testator, so far as it is manifest, is to be carried into effect — whatever be the technical terms which he has applied or misapplied. If, for instance, a testator were to say, 'I give my property to my son John in fee-simple, my intention being that he shall have it only during his life, and that, on his death, it shall belong to his brother Tom,' there is no doubt that, notwithstanding the erroneous introduction of the words 'in fee-simple,' John would take

only for his life. When Perrin and Blake came before Lord Mansfield, he had to decide between these conflicting principles. If he carried into effect the manifest intention of the testator, he broke through the rule in Shelley's case. If he adhered to the rule in Shelley's case, he broke through the rule that a will is to be interpreted according to its manifest meaning.

'The universal opinion,' says Lord Campbell, 'of lawyers now is, that Perrin and Blake should at once have been determined in conformity to the rule in Shelley's case, which had long been acquiesced in and acted upon. But unfortunately, Lord Mansfield, being intoxicated by the incense offered up to him, or misled by an excessive desire of preferring what he considered principle to authority, took a different view of the construction of the will, and resolved that John should be considered as having taken only an estate for life.' *

The most important sentences in Lord Mansfield's judgement are these:—

'The law having allowed a free communication of intention to the testator, it would be strange to say to him, "Now you have communicated your intention so that everybody understands what you mean, yet, because you have used a certain expression of art, we will cross your intention, and give to your will a different construction, though what you meant to have done is perfectly legal, and the only reason for contravening you is, that you have not expressed yourself as a lawyer." My opinion is, that

* Vol. ii. p. 432.

the intention being clear, beyond doubt, to give an estate for life only to John, and an inheritance to be taken successively by the heirs of his body, and this intention being consistent with the rules of law, it shall be complied with, in contradiction to the legal sense of the words used by the testator so unguardedly and ignorantly.'*

Lord Mansfield's judgement was reversed in the Exchequer Chamber: Lord Campbell tells us, and we bow to his authority, that the universal opinion of lawyers now is, that it was properly reversed. And yet we must own that we are inclined to support it. Without doubt it was opposed to some previous decisions. The rule in Shelley's case had been applied to wills where it was manifest that the testator, if he had known of its existence, would have protested against its application. But if Lord Mansfield had submitted to be bound by precedent, he would not have effected the great legal reforms for which we venerate his name. He openly proclaimed, in Somersett's case, that he cared not for the authority of judges, however eminent, if it were contrary to principle. 'We do not sit here,' he said on another occasion, 'to take our rules of evidence from Siderfin and Keble.' 'It was he,' says Lord Brougham, 'who reversed the decision of the Court of Session upon the celebrated Dunreath case,' and honour due is accorded to the example set by his 'salutary courage.' Why, then, was he bound to take his rules of construction from Shelley's case or from Coulson's case, if they were clearly absurd? If they were such that,

* Vol. ii. p. 432.

although proclaiming that there is no magic in words—although avowing that the intention of the testator is the only rule of interpretation — they yet interpreted wills so as to give absolute uncontrolled interests to those to whom he intended to give only a limited enjoyment, and so as to exclude those who were, perhaps, the principal objects of his bounty.

Of course, departure from precedent is an evil, but departure from common sense is a greater one; and there is probably nothing which more shocks public feeling, which tends more to make men treat the civil law as a solemn farce, played for the benefit of lawyers, or which more demoralises the proprietary classes, by teaching and enabling them to seise or to retain property which they well know that they were not intended to have, than these technical misinterpretations of plain expressions. They have always, however, been the favourites of lawyers. They produce what are called strong, striking, leading cases — cases which, from their very unreasonableness, are easily remembered, and which, from the length to which they go, authorise by analogy a vast number of minor absurdities.

Whatever, however, after the lapse of nearly a century may be thought of Lord Mansfield's decision in Perrin and Blake, it is certain that at the time it injured his legal reputation. His directions to the juries who had to decide on the libels of Junius injured it still more. In Perrin and Blake he had overruled precedent to support principle: in Rex *v.* Woodfall and Rex *v.*

Miller, he supported precedent to the utter destruction of principle.

If there be any one institution on which the liberties of England peculiarly depend, it is the power which is always given to juries, and consequently the duty which is sometimes imposed on them, of pronouncing a general peremptory acquittal. If they were merely empowered to find facts, leaving the law on those facts to be declared by the court, the Crown, or at least the judges appointed by the Crown, would, on any pretence, be able to crush an obnoxious agitator. O'Connell might have been convicted of treason on evidence that he attended a public meeting and called his hearers 'hereditary bondsmen.' The jury would have had only to find that he was present at the meeting, that he said the words, and that those words alluded to the Irish people: it resting solely with the court to decide whether the pronouncing such words, so alluding, did or did not constitute treason.

Yet this was the law laid down by Lord Mansfield in cases of libel. In Rex *v.* Woodfall he told the jury that all they had to consider was whether the defendant had published the letter set out in the information, and whether the innuendos, imputing a particular meaning to particular words, as that 'the k——' meant 'His Majesty King George III.,' were true; but that whether the letter were libellous or innocent, was a pure question of law, for the opinion of the court. In Rex *v.* Miller he said, 'Under the full conviction of my own mind that I am warranted by the uniform practice of past ages, and by the

law of the land, I inform you that the question for your determination is, whether the defendant printed and published a paper of such tenor and meaning as is charged by the information? If you find the defendant not guilty, you find that he did not print and publish as set forth: if you find him guilty, you find that he did print and publish a paper of the tenor and meaning set forth in the indictment. Your verdict finally establishes that fact; but you do not by that verdict find whether that publication was legal or illegal.'*

We have already admitted that these monstrous doctrines were supported by authority. We do not accuse Lord Mansfield of judicial corruption in any of its forms. We do not think that any motive would have induced him to deliver from the bench anything which he did not conscientiously hold to be law. What we blame, or, rather, what we pity, is the political ignorance or the political prejudices which led him to believe that it was just and expedient that the law should be such as he laid it down. He must have believed it to be right, to be conducive to the welfare and good government of England, that nothing should be published which the ministers of the Crown, or the judges appointed by those ministers, disapproved. He must have thought it just and expedient that the Press should be submitted to an ex post facto censorship, and that fine, imprisonment, and pillory should be employed as evidences of the censor's disapprobation.

* Cited, vol. ii. p. 480.

We say that he must have thought all this just and expedient, because had he thought otherwise he would not have allowed it to continue to be law. To Lord Mansfield authority was a support, but not a restraint. When he thought that the interest of the public required it, he broke its chains as if they had been threads. If he had felt towards the liberty of the Press as every man of every shade of political opinion now feels, he would have disclaimed with indignation the unconstitutional authority which Raymond and his immediate successors had usurped, and which Lord Ellenborough a very few years afterwards emphatically disclaimed, both for Lord Kenyon and for himself.*

We now part from Lord Campbell — grateful for many hours of interest, pleasure, and instruction, and regretting only that he has not thought fit to give to us all that he has prepared for us. We do not believe that the descendants of the great Judges who succeeded Mansfield are so morbidly sensitive as to be unable to look with pleasure on faithful portraits of their ancestors. Lord Campbell does not flatter, but he is perfectly candid. His leanings seem generally favourable to his sitters. He delights in bringing out their courage, their justice, their

* On the trial of Cobbett, in 1804, Lord Ellenborough commenced his summing up as follows: — 'I never doubted that an English jury had the right of judging in these cases, not only of the fact of publication, but also of the nature and construction of the thing published: and the noble person whose place I unworthily fill entertained the same sentiments.' — *State Trials*, xxix. 49.

generosity, their learning, and their acuteness — in short, all their moral and intellectual excellences. That he should be equally honest in marking their defects is what would have been required by themselves, and we trust would not be regretted by their friends.

FEUERBACH.*

[EDINBURGH REVIEW, October 1845.]

ANSELM VON FEUERBACH was one of the most remarkable men whom Germany has recently produced. He was eminent, in practice and in theory, as a judge, as a legislator, and as a writer. He long and worthily presided in the highest criminal court of Bavaria; he was the principal framer of the Bavarian penal code; his exposition of the general criminal law is a text-book throughout Germany; and the last of his works (mentioned below) places him in the first rank as a narrator and as a psychologist. Of some portions of this work, and of the system of procedure which it exemplifies, we propose to give a short account.

We must warn our readers, however, not to expect a German trial to afford to them the same sort of instruction, or the same kind of mental exercise, which they have been accustomed to find in the reports of English criminal

* Actenmessige Darstellung Merkwürdiger Verbrechen. Von Anselm Ritter von Feuerbach. (Narratives of Remarkable Crimes, compiled from the Official Records. By Anselm von Feuerbach.) Giessen: 1839.

Strafgesezbuch für das Königreich Bayern. (Penal Code of the Kingdom of Bavaria.) Munich: 1839.

proceedings. An English report is a drama in which the reader, unconsciously perhaps, becomes one of the principal actors. He unavoidably assumes the character of a juryman; and, with the exception that he reads the evidence instead of hearing it, he has all a juryman's means of arriving at a verdict. He has before him the opening speech of the counsel for the prosecution, which states what is expected to be proved; the examination and cross-examination of the witnesses; the defence by the prisoner's counsel; and the recapitulation and commentary of the judge. Each set of appearances and of conflicting inferences is explained and enforced by an advocate, and they are then weighed before him, against one another, by an impartial and experienced moderator. A more instructive exercise in the great business of life, the balancing of probabilities, can scarcely be imagined.

But if, after having ascertained the prisoner's guilt, he wishes to account for it—if he wishes to enquire what were the accidents of natural disposition or of education which predisposed him to the commission of crime, or the circumstances which supplied the place of such a predisposition—if he wishes, in short, to make the prisoner a subject of philosophical enquiry—he gets no assistance from the English courts. The only question submitted to the jury, and the only question on which, therefore, evidence can be received, is, did the prisoner wilfully commit the act of which he is accused?

A bright light is endeavoured to be thrown on his conduct, immediately before and immediately after the

occurrence which occasions the trial; but, with the rare exception of the cases in which insanity is the defence, all the rest of his history is left in darkness. Even as to the narrow question which alone is allowed to be investigated, the reader must often be struck by the inadequacy of the means employed. A trial resembles one of the games, in which the problem is to effect a certain object, complying with certain conditions imposed for the express purpose of creating difficulty, and giving room to chance. It is a steeple-chase across obstacles intentionally interposed.

That the accused, and those who are his judges, should be clearly informed what is the offence with which he is charged, or, in other words, that the trial should be preceded by an indictment, is proper; but is it rational that the omission of some technical word, which neither the prisoner nor the jury would have remarked or have understood if it had been present — or the variance of the fact laid, from the fact proved, in some utterly unimportant circumstance — should at once stop the proceedings; and exempt a man whose guilt is manifest, not only from immediate conviction, but sometimes even from further enquiry?

Again, it is quite right that the investigation should not be unnecessarily prolonged, that the accused should not be broken down by an indefinite imprisonment, or harassed by repeated and abortive trials. But the English rule that the trial, when once begun, should be continuous — that the unexpected absence of a witness, or some unforeseen want of proof, should produce an immediate acquittal, though perhaps a delay of a few hours would have re-

medied the defect — is a superstitious adherence to a generally useful regulation.

Again, the more heinous accusations are those as to which it is most difficult to obtain direct evidence; — neither premeditated murder, nor robbery, nor arson, is often committed in the presence of third persons. The proof, therefore, is almost always circumstantial — that is to say, it consists of appearances which can be accounted for only, or most easily, by supposing the prisoner's guilt. The most obvious, and generally the most effectual, mode of ascertaining the truth or erroneousness of this supposition, is to examine the accused. If it be false, the clearness, consistency, and veracity of his answers will assist in establishing his innocence. If it be true, he must afford evidence as to his guilt by confession, or by silence, or by falsehood. But, in an English trial, not only is such examination forbidden, but the prisoner is allowed, indeed recommended, to leave his defence to his counsel, and to remain himself a mere passive spectator.

Again, where several persons are suspected of having concurred in a crime, the admissions by one must often supply proof against the others. But the confession of a prisoner is not supported by his oath; though it be received against himself, therefore, it is not allowed to be evidence against anyone else. It would seem that, to avoid this difficulty, the persons suspected might be tried separately, and those who are not yet under accusation might be summoned as witnesses. But this expedient is rendered useless by the rule, that no man is required to

answer questions when he chooses to believe, or to assert that he believes, that his answer might render himself liable to legal punishment. He may be required to give evidence which may ruin his fortune or destroy his character; but if it would expose him to a chance, however slight, of any penal infliction, however trifling, he has a right to say, I refuse to answer. As a last resource, the accomplice, whose evidence is to be used, is allowed to bargain that he shall not be prosecuted himself. As the price of his betraying his associates he obtains an impunity, mischievous to society and disgraceful to the law, which disgusts those who can comprehend its grounds, and perplexes those who cannot.

We will illustrate some of these remarks by a reference to one of the most solemn legal proceedings which has occurred in England during the present century. The Earl of Cardigan was accused of having shot at Captain Tuckett with the intent to kill, to maim, or at least to injure him. The trial took place before the highest court in the empire, the House of Lords. A great officer was created to preside over it. The judges were summoned to give their advice. All the foreign ministers and the most eminent of the British public constituted the audience. Nothing could be more impressive than the ceremonial.

To the unlearned, the proof of the prisoner's guilt appeared to be complete. The duel was fought about two hundred yards from the Wimbledon windmill. The miller, from his elevated position on the stage of the mill,

saw the party approach and take their ground. While he was hurrying to interfere, he saw the principals receive pistols from their seconds and fire once, and receive fresh pistols and fire again. One of them fell wounded as he came up. The wounded man gave to him his card, engraved with the name Captain Harvey Tuckett; the other admitted himself to be Lord Cardigan. Captain Tuckett was allowed to be removed. Lord Cardigan was taken to the police-office; and, as he entered, told the inspector that he was his prisoner; that he had been fighting a duel, and had hit his man. There was, therefore, the testimony of an eye-witness and the confession of the accused. What more could the court want? What they wanted was *to know the second and third Christian names of the wounded man.* The indictment stated his Christian names to be Harvey Garnett Phipps. The card omitted the two latter. A Mr. Codd, who acted as Captain Tuckett's agent, was examined, and proved what were his Christian names; but, as he was not present at the duel, could not identify his Captain Tuckett with the wounded man. But it was supposed that Sir James Anderson, a physician, who had been on the ground to give professional services, could add the information that was wanted.

This was his examination:—

'*Lord High Steward.*— "Sir James Anderson, I think it my duty to inform you that you are not bound to answer any question which may tend to criminate yourself."

'*Mr. Attorney-General.*—"Are you acquainted with Captain Tuckett?"

'"I must decline answering that."

'"Were you on that day called in to attend any gentleman that was wounded?"

'"I am sorry to decline that again."

'"Can you tell me where Captain Tuckett lives?"

'"I must decline that question."

'"When did you last see Captain Tuckett?"

'"I decline answering any question that may tend to criminate myself."

'"And you consider that answering any question respecting Captain Tuckett may tend to criminate yourself?"

'"It is possible that it would."

'"Then the witness may withdraw."'

Such being the state of the proof, the counsel for the prisoner maintained that no case was made which required a defence; and Lord Denman, as Lord High Steward, proceeded to state what he thought ought to be the decision of the House.

The charge was, that Lord Cardigan had shot at Harvey Garnett Phipps Tuckett. The defect of the proof was, that it was not shown that the person shot at bore all these names.

'It is proper,' said Lord Denman, 'to observe that the law requires such proof to be given. The law gives no countenance to the opinion, that where the injury itself is, in fact, well established, the names borne by the injured party may be considered as immaterial. *There is little hazard in asserting, that no year passes without some examples of acquittals taking place in some of the courts*

by reason of mistakes or defects of this kind. If this were an ordinary case, the judge must hold the objection well founded, and the jury would at once return a verdict of acquittal.' In compliance with this recommendation, Lord Cardigan was unanimously acquitted.

If the object of the English procedure were to arrive at the substantial truth, would it have been suffered to be insulted and defeated by this solemn trifling? Would the prosecutor have been required to prove anything so irrelevant as the second and third baptismal names of the injured party? Would a witness have been allowed to refuse information, merely because he feared, or affected to fear, that it might expose him to punishment? What would be easier than to remove this excuse, if it be one, by enacting that his evidence given in court shall not be received against himself? If a link in the evidence is wanting, why should not the court have the power of adjourning (in Lord Cardigan's case a day, perhaps an hour, would have been sufficient) until it can be procured?

The explanation probably is, that the discovery of truth was not the sole, or even the principal purpose, which the rules of English criminal procedure were intended to effect. They have grown up in the long contest between the Crown, the aristocracy, and the people, which has produced, and continues to produce, the constantly varying institutions forming what is called the 'Constitution of England.' Until the Revolution, they were, in many respects, unjust to the prisoner. He had no counsel, nor any means of compelling the attendance of his witnesses.

They were not allowed to be sworn; and yet the jury was always reminded that their mere statements ought not to be listened to when opposed to the oaths of those for the Crown. The penal law was frightfully sanguinary and oppressive; it inflicted death and forfeiture with almost wanton profusion; and supplied weapons, from which no one who had a public or a private enemy could feel safe. The rules to which we have alluded, and many others, which are equally effectual to screen the guilty, were invented in order to shield the innocent. The judges sympathised with the accused. They acted as European captives have done, when they have been forced by a barbarous conqueror to serve his artillery against their own countrymen. They withdrew the balls, or misdirected the pieces. And the rules which were thus introduced have, as is usually the case, long survived their original motives.

The Penal Code of Bavaria, the country from which Feuerbach's narratives are taken, bears a general resemblance to the criminal law of the other portions of Germany. Its procedure and its rules of evidence are far more faulty than those of England; but the defects are different, and, indeed, often opposite. Strictly speaking, there is nothing in Bavaria analogous to an English trial. There is no jail delivery; no day on which the prisoner must be acquitted or convicted. The whole trial, if it can be called one, is a long enquiry; first, before the local judge of the district in which the events constituting the supposed crime took place; afterwards, by the superior

criminal tribunal, which, after perusing all the documents, pronounces a verdict and a sentence; and lastly, in grave cases, by the high court of appeal, which adopts, modifies, or reverses that verdict or sentence, or directs a further enquiry.

On the occurrence, or supposed occurrence, of a crime, the *Untersuchungs richter* (which may be translated Examining judge), a functionary acting both as prosecutor and as judge, sets to work to ascertain, in their minutest detail, all the facts constituting the supposed crime, and all the grounds for suspecting any individual as concerned in it. Those against whom the judge thinks that there is a plausible suspicion, are placed in prison, and there must remain until the court is perfectly convinced of their guilt or of their innocence, or of its own inability to ascertain either the one or the other. The German judicial enquirer is bound by no fetters. He hunts up every collateral fact or suggestion which may possibly influence the decision or the sentence. For the purpose of ascertaining the à priori probability of the prisoner's guilt, he unravels his whole history from earliest childhood. As that history approaches the time of the supposed crime, he endeavours to make it a perfect chronicle of all the prisoner's actions and even words. By means which we shall mention hereafter, he obtains from him, on all these points, the fullest statements that can be wrung from him, and then investigates, as separate enquiries, the truth of every detail. If doubt is thrown on the testimony of any of the witnesses — whether by general imputations or

by defined charges, or by discrepancy even as to immaterial points — this doubt is to be cleared up, and the general enquiry waits until the credibility of the witness has been established or broken down. The original subject of investigation, or, to use the language of the English law, the issue between the Crown and the prisoner, is like an Indian fig-tree. It can send out suckers, which become trees as large as their parent, and have the same powers of reproduction.

Such an enquiry cannot be defeated by mere formal errors. There can be no flaw in the indictment; for there is no indictment. The prisoner is not tried for having committed a specified crime; but the two enquiries, whether any and what crime has been committed, and whether the prisoner had any and what share in it, go on simultaneously. He cannot escape because, at a critical point in the proceedings, the prosecutor has omitted to prove a link in the evidence, or because a material witness is not produced. There is no critical point in a German trial. No one hurries himself, or allows others to hurry him, in that tranquil country. What is not proved to-day may be proved to-morrow, or, more probably, six months hence. If a witness is not forthcoming, the enquiry waits until he appears. Justice prides herself on being sure, and is utterly indifferent to the reproach that she is slow. One year, two years, five years, or even seven years may elapse before the final decision is obtained. And this decision may be that, the evidence being deficient, the prisoner shall be detained,

either in actual confinement, or in an appointed place of residence under the inspection of the police.

In Germany, again, not only is the English rule, that a man shall not be required to criminate himself — a rule which perhaps excludes more evidence than all our other technical rules put together — unheard of, but the whole procedure is based on the opposite principle. The evidence given by a man against himself, being the most satisfactory of proofs, is the proof which the judicial prosecutor is most anxious to extort. Until a period within the present century, it was generally obtained by torture. The principal use of other evidence was to lay a ground for placing the prisoner in the torture chamber, and if he came out of it without having confessed, he was entitled to his discharge. Feuerbach tells us that he never was forgiven by the old Bavarian judges for having contributed towards depriving them of a process so simple, so convincing, and so economical of time and trouble. And when he adds, that, since the abolition of torture, the constant endeavour of the courts has been to obtain for it a substitute as nearly as possible resembling the original, he might refer to the work mentioned at the head of this Article, as proving the truth of the statement.

Nothing at first sight appears more remarkable than the constant confession of the accused. In England, any admission of guilt, however casual or indirect, is evidence. It may have fallen from the prisoner years before the trial, or have been made to the constable who arrested him or to one of his companions in prison; or where there

are accomplices, a spy may be placed, as was the case with Mr. Steele's murderers, to overhear and report their conversation. And yet nothing is rarer than conviction founded on confession. Those who confess, confess only when the trial is over, and the majority die protesting their innocence. In Bavaria, a confession is not received unless it be deliberately made in the presence of two witnesses, or to the judge. And yet, with the exception of one or two persons arrested on slight suspicion, and clearly innocent, there is scarcely one among the accused, whose stories Feuerbach relates—different as they are in sex, in age, in rank, in knowledge, and in character—who is not convicted on his own confession. In one or two cases the confession is guarded, so as to avoid the circumstances which would make the offence capital; but generally it is complete and circumstantial.

Even to Feuerbach himself, accustomed as he was to it, this circumstance appeared to require explanation; and he has given that explanation in an interesting chapter on confessions. He holds the principal motives to confession to be five.

First, remorse; the stings of an irritated conscience, and the desire to soothe them by the sort of amends which a full confession affords. This, however, he adds, experience shows to be one of the rarest phenomena in criminal procedure. For one criminal who confesses from no motive but remorse, there are a thousand who scarcely know that such a feeling exists.

Secondly — and this, he says, is the prevailing cause —

the prisoner's inability to resist or elude the cross-examination of the judge. He cannot reconcile the inconsistencies of his narration; he is ashamed to persist in an evident lie; he is fatigued by having to invent stories which the judge immediately proves to be falsehoods; he knows that every such detection sinks him lower and lower in the estimation of the judge; and he hopes that by frankness he may obtain some approach to sympathy.

A *third*, and very frequent source, is the desire to escape from the agony of suspense — an agony which, in the solitary unemployed days and sleepless nights of a German prison, may often be severer than any punishment short of death.

A *fourth* is stupid, sluggish despair. The prisoner has not the spirit or the energy which are necessary to play out a losing game. He gives himself up at once for lost, and saves himself the trouble of a defence.

And, *lastly*, every prisoner feels that he is in a great measure in the power of the examining judge. He knows that the judge can aggravate or relax the rigour of his present imprisonment, and that his report must influence the final sentence of the court, and may decide the question of pardon. Whether he make a confession or not, he expects to be convicted; he sees the judge's eagerness to obtain one, and he yields in the hope of propitiating him.

The part of the Bavarian criminal code which contains Criminal Procedure consists of four hundred and eighty-two articles, contained in thirty-two chapters. Two whole

chapters, containing sixty-two articles, rather more than one-eighth of the whole, are devoted to the examination of the accused. Except in the case which we shall afterwards mention, of *confrontation*, the only persons present are the enquiring judge (*Untersuchungs richter*), the accused, and a notary. The judge informs the accused that it is his duty to tell the truth, and that, even if he be guilty, a frank confession may mitigate his punishment. He then asks him whether he knows why he has been summoned or arrested.* If he protest his ignorance, or do not assign the real ground, he is to be told that he is not telling the truth, and that the judge is well aware that he knows about the matter much more than he pretends.† If he persist, the examination is to be immediately closed for that day. At the next examination, he is to be reminded of the duty of truth, and of the evil which he may bring on himself by falsehood,‡ and then to be questioned as to facts bearing on the imputed crime — beginning with those more remotely connected with it, so as gradually to lead him into denials inconsistent with innocence, or into admissions inconsistent with an invented defence. It is only after all attempts to lead him to avow his knowledge have failed, that he is to be told, not precisely the crime, but the sort of crime of which he is accused,§ and not a word is to be said of the evidence.

If, on the other hand, he states the real cause of his summons or arrest, he is to be desired to relate all that he knows on the subject, and his narrative, however

* Art. 157. † Art. 158. ‡ Art. 165, 167. § Art. 167.

improbable, is not to be interrupted. When he has told his story, he is to be examined as to all its details, so as to make it as circumstantial as possible.* And he is to be again and again examined, at intervals, on the same points, and his answers compared.† Irrelevant questions are to be mixed with those which are relevant, and unimportant facts with those that are important; so that the prisoner may not know whether the answer which he is giving be material or not.‡ Wherever it is possible, he is to give an immediate answer, and not to have time to invent a false one.§ Great anxiety is manifested throughout the Code, that until the case against him has been completed, the prisoner shall know as little as possible about it. He is allowed no communication with the external world. Not only are all the witnesses examined in his absence, but all their depositions are concealed from him; nor is he allowed any copy of his own statements. The judge is directed to be careful that the questions shall not enable him to suspect the nature or the amount of the evidence against him.

When we found that the Code contained a chapter on *confrontation*, we supposed it to be one of the aids given to the defence. We supposed it to be an opportunity given to the prisoner and to his counsel to cross-examine the witnesses for the crown. We found it, however, to be merely one of the instruments of attack. When all other means, says the law, have been tried and have

* Art. 161. † Art. 173. ‡ Art. 175, 176. § Art. 178.

failed, the judge may, at his discretion, endeavour to surprise the prisoner into confession, by unexpectedly producing before him any one or more, either of the witnesses against him, or of his accomplices who have already confessed.* For this purpose the witness is to be prepared by reminding him of his former statements, and is to be asked if he will repeat them in the presence of the accused. If he refuse, he must state the grounds of his refusal, on the sufficiency of which the court must decide. If he consent, whether willingly or by order of the court, those portions of his evidence which are to be concealed from the prisoner are to be selected, and he is to be strictly enjoined not to repeat or to allude to them.†

The prisoner is then to be reexamined; the improbability or the inconsistency of his denials or of his statements is to be pointed out to him; he is to be again and again urged to tell the truth; and if he be still obstinate, the witness is, as unexpectedly as possible, to be produced, and reexamined, so far as the judge thinks it expedient, in the prisoner's presence. The prisoner is not to put any question, but is allowed, and indeed required, to give his own statement as to the facts deposed to by the witnesses. If more than one person is to be confronted with the prisoner, each is to be introduced separately, reserving the most material as the last. The judge, says the Code, must watch the countenance as well as the answers of the prisoner, and snatch every occasion of leading or driving him to confession; and if

* Art. 219, 224. † Art. 222.

he succeed, the *confrontation*, having served its purpose, is to be immediately closed, and the judge's whole attention given to the completion of the confession.*

If the prisoner refuse to answer, or try to evade answering merely by referring to some previous answer, he is to be punished by imprisonment, on bread and water; and, if that fail, by blows—of which, however, not more than twenty can be inflicted in one day. All other modes of arriving at the truth are then to be used, and if they are unsuccessful, he is to be detained in prison as long as his obstinacy continues.†

The importance attached to obtaining a confession is explained, when we consider the rules by which the efficacy of all other evidence is encumbered and impaired.‡

Witnesses are divided into incompetent, suspicious (*verdächtig*), and sufficient (*vollgultig*). Children under the age of eight years, those who have accepted any reward or promise for their evidence, those who have an immediate and certain interest in the success or failure of the prosecution, those who have been accused of calumny, of giving false information or of perjury, and have been convicted or not fully acquitted, and those who, in any material part of their evidence, have been guilty of falsehood, or of inconsistency, are all *incompetent* witnesses. Their evidence is to be rejected in toto. Persons under the age of eighteen, the injured party, informers (unless officially bound to inform), accomplices, persons connected with the party for whom they depose, by blood, by

* Art. 228. † Art. 188, 189. ‡ See Articles 276 to 297, inclusive.

marriage, by friendship, by office, or by dependence—persons opposed to the party against whom they depose, by strife or by hatred, those who may obtain by the result of the enquiry any remote or contingent benefit, persons of suspicious character, persons unknown to the court, and those whose manner gives the appearance of insincerity, or of partiality—are all *suspicious* witnesses.

The testimony of two sufficient witnesses, stating not mere inferences, but facts which they have perceived with their own senses, amounts to proof. That of one sufficient witness amounts to half proof.

Two suspicious witnesses, whose testimony agrees, are equal to one sufficient witness. Therefore the testimony of two suspicious witnesses agreeing with that of one sufficient witness, or the testimony of four suspicious witnesses by themselves, amounts to proof.

When the evidence on each side, taken per se, amounts to proof, the decision is to be in favour of the accused. In other cases, contradictory testimonies neutralise one another. So that if there be two sufficient witnesses on one side, and two suspicious witnesses on the other, it is as if there were a single sufficient witness, and consequently a half proof. But if the number of sufficient witnesses had been three, it would have amounted to proof—the two suspicious witnesses merely neutralising the evidence of one of the three sufficient witnesses, and therefore still leaving the fact proved. So the testimony of seven suspicious witnesses, opposed only by three

similar witnesses, amounts to proof—that of six to half proof.

Circumstantial evidence amounts to proof when each fact of which it consists is fully proved (that is to say, by two sufficient witnesses, or by one such witness and two suspicious ones; or by four suspicious ones), and when these facts cannot be rationally accounted for on any hypothesis except that of the prisoner's guilt.* If any other explanation be possible, though it may be improbable, or if the facts be imperfectly proved, the circumstantial evidence is imperfect.† The Code does not state with its usual arithmetical preciseness the gradations in value of imperfect circumstantial evidence. It seems, however, that it may amount to half proof; for (by Art. 324), if it coalesce with direct evidence amounting to half proof, the mixture amounts to whole proof. The most complete circumstantial evidence, however, does not authorise the infliction of death.‡

Let us see how such rules may work. A man meets two others in a path through a wood. Soon after he has passed and lost sight of them, he hears screams. He turns back, and finds one of them lying senseless on the ground and sees the other running away. He overtakes him, and finds on him the purse and watch of the wounded man, who by this time is dead.

The murderer and robber, unless he will confess, must escape. In the first place, the evidence is only circumstantial—no one saw him give the fatal blow; and, secondly,

* Art. 328. † Art. 327. ‡ Art. 330.

as there is only one witness, there is only half proof even of the circumstances to which the witness deposes. We will suppose, however, that the wounded man revives, and deposes that the prisoner demanded his watch and purse, and on his refusal struck him down, and took them. Even then the prisoner, unless, we repeat it, he will confess, cannot be convicted even of the robbery. For the only direct evidence is that of the injured person, and he is, as we have seen, a suspicious witness; his testimony, therefore, amounts to only half of a half proof; and as that of the other witness amounts to only a half proof, the prisoner must be discharged for defect of evidence. Well might Feuerbach say, that unless a man choose to perpetrate his crimes in public, or to confess them, he need not fear a conviction.

Even a confession is not conclusive. It has no resemblance to the English plea of Guilty. In the first place, it is evidence only of the prisoner's acts, not of any inferences from those acts. Therefore it is no evidence of the '*that-bestand*,' the *corpus delicti*, the fact that a given crime was committed.* Thus, if a prisoner confess that he shot a man, his confession is evidence that he loaded a pistol, directed it towards the person in question, and pulled the trigger. But it is not evidence that these acts occasioned that person's death. That must be proved by inspection of the body. The only cases in which a confession is allowed to assist in proving the '*that-bestand*,' is when the following requisites concur: First, the

* Art. 268.

impossibility of fully proving the '*that-bestand*' in any other way must be shown. Secondly, the prisoner must be proved to be a person from whom the conduct which he confesses may be expected. Thirdly, there must be other evidence of the '*that-bestand*,' sufficient to exclude any rational doubt, though not legally complete.* Fourthly, in cases of murder, the acts confessed by the prisoner must be such as necessarily occasion death; or, in the opinion of professional witnesses, must have occasioned death in the case in question.†

We shall see hereafter the difficulties occasioned by these rules.

And, in the second place, a confession does not amount to proof, even of the acts which it confesses, unless it be made to the *Untersuchungs richter* at a formal hearing, which must have taken place on a day subsequent to that of the first examination. No conviction can be founded on a confession made by the prisoner during his first examination.‡ An informal confession formally proved, that is to say, a confession made in the presence of two sufficient witnesses, but not to the *Untersuchungs richter*, amounts to half proof, and therefore justifies conviction if it can be assisted by another half proof, such as conclusive circumstantial evidence, or the direct evidence of one sufficient eye-witness, or of two suspicious eye-witnesses, provided that those witnesses are not also the witnesses who prove the confession.§

We will finish our account of the criminal procedure of

* Art. 267. † Art. 271. ‡ Art. 162. § Arts. 332, 333, 334.

Bavaria, by a short outline of the law, so far as it respects the defence and the sentence.

With respect to the defence, the *Untersuchungs richter* is directed to seek and produce evidence establishing the innocence of the prisoner, as diligently as he does that which proves his guilt. The prisoner, however, is not allowed to interfere until the judge has exhausted all his own means of investigation. When this has been done, the prisoner is offered, and in some cases required to accept, the assistance of a legal defender. He now, for the first time, knows what is the evidence against him, and perhaps, for the first time, knows of what he is accused. The whole of the proceedings are exhibited to the defender, and he is allowed to visit the prisoner in private, having previously sworn not to become a party to any unrighteous defence.* He is then to designate to the *Untersuchungs richter* the points as to which the prisoner is entitled to further investigation.

It does not appear from the Code that the prisoner, or his defender, can summon any witnesses; but it is probable that a demand that they be summoned is seldom refused. Nor does it appear that the prisoner or his defender can examine any witnesses for the defence, or personally cross-examine those who have been already examined. We find no exception from the general rule (laid down in Art. 207) that every witness is to be examined in the absence of the prisoner. The prisoner or his defender is, lastly, to give a minute (*Zum Protocolle*

* Art. 145.

geben) of his objections to the course of procedure, to the force of the inculpating evidence, and to conviction or punishment; and is allowed, but not required, to develope this minute by a written defence (*Vertheidigungsschrift*).

The whole of the proceedings are then sent by the *Untersuchungs richter* to the immediately superior criminal court of decision (*Kriminal Gericht*). This court refers them to one of its members, who has to report—

1. Whether the case be ripe for decision?

If it be, 2. Whether the accused be guilty, and if so, of what crime?

If he be, 3. What punishment ought to be inflicted?

The court decides on all these questions by a majority. If the first question be decided in the negative, the case is sent back to the court of enquiry for further investigation. If it be decided in the affirmative, the court proceeds to give judgement; which may be—

1. That the accused is innocent; or,

2. That he has not been proved to be guilty; or,

3. That the enquiry is abandoned for want of evidence; or,

4. That the accused is guilty of a crime, which must be specified in the judgement, and ought to suffer a punishment, which must also be so specified.

When the punishment is death, or imprisonment for life, or for not less than twenty years, the sentence must be sent for revision to the high court of appeal. In other cases, an appeal does not take place, unless it be

demanded by the accused on the one hand, or by the president of the court of decision (*Kriminal Gericht*) on the other. The court of appeal, if it think the enquiry insufficient, may remit the case to the same or to a different court of enquiry; or, if it think the decision wrong, to the same or to a different court of decision; or it may, of its own authority, alter the judgement of the inferior court, either to the advantage or to the disadvantage of the accused, or it may simply confirm it. Ultimately, a final decision is obtained; and it is then to be carried into effect, if it be favourable to the prisoner, immediately; if it be unfavourable, within twenty-four hours after it has been announced to him.

We will now illustrate the working and the results of this system by two of the most remarkable of Feuerbach's narratives.

The small farm called Thomashof, in the village of Lauterbach, between Ratisbon and Landshut, was inhabited in the year 1807 by a family, consisting of Francis Riembauer, the Roman Catholic curate of the parish, and also the proprietor of the farm, and a widow named Frauenknecht, and her two daughters, Magdalena and Catherine, one aged nineteen, and the other eleven years. The Frauenknecht family had been the former owners of the farm, and had sold it to Riembauer; and being on terms of great intimacy with him, continued to reside there. All enjoyed in a high degree the esteem of their neighbours. The widow and her daughters were respected

for their integrity and industry, and loved for the softness of their manners, and (we use the words of Riembauer) 'the angelic kindness of their dispositions.' The younger daughter, Catherine, showed an intelligence far beyond her age. Riembauer himself passed for a model of apostolic fervour, charity, and simplicity. He was born in 1770, and therefore was in his thirty-eighth year at the commencement of our narrative. He was the son of a day-labourer, a station lower in that country, where almost everyone has some land, than that of an English farm-servant. The first years of his boyhood he passed as a shepherd's boy, but before he was thirteen he felt the power and the ambition to rise higher. With the assistance of some instruction from his clergyman, he obtained admission to the public seminary of Ratisbon, and in 1795 was ordained.

For the ten following years he served in the ministry in several of the neighbouring parishes; and in 1805 became curate of Pirkwang, of which Lauterbach is a hamlet. He had a fine person, was an eloquent preacher, was zealous, active, and kind in his intercourse with his parishioners, and was honoured, says Feuerbach, as a half-glorified saint. It was believed, indeed, and he encouraged the belief, that he had strange communications with the spiritual world. Souls from purgatory visited his chamber, implored a mass from him, and were released as soon as it had been said. He saw them himself fluttering towards heaven in the form of doves. Sometimes, when he was abroad at night on the duties of his cure, they danced

before him like fiery exhalations—in the hope, as he supposed, to receive his benediction; and ranged themselves on his right or on his left as he extended his hand.

Until his purchase of the Thomashof farm he had avoided all worldly engagements, and dedicated his leisure to literature and to spiritual exercises. After that period he devoted much of it to the labours of the farm, which he appears to have performed himself, with little assistance except from the widow and her daughters. Against the few persons who thought it unbecoming that a priest should act as a ploughman or a groom, he defended himself by the decisions of the council of Carthage, and the authority of Saint Epiphanius; and his parishioners in general thought it a proof of apostolic humility. To his humility also was it attributed that he never looked anyone in the face; and walked with a sunk head, downcast and half-closed eyes, and hands folded over his breast. In June 1807 he passed in Munich, with great distinction, the examination which candidates for ecclesiastical preferment undergo in Bavaria. In the beginning of 1808 he obtained the benefice of Priel, some miles from Lauterbach, sold the Thomashof farm, and removed with the Frauenknecht family, mother and daughters, to his new parsonage. In June 1809, the mother and the elder daughter died within a few days of one another, after short illnesses.

The situation of a *Pfarrköchin* (minister's cook) appears to rank in Bavaria above ordinary menial service. She is generally the only domestic of the priest, and in a

country where, among those who are not noble, there is comparatively little inequality of rank or fortune, she is often his principal companion. Magdalena, the elder daughter, had filled this place in Riembauer's household, and on her death he earnestly endeavoured to persuade Catherine, the younger daughter, now about thirteen, to supply her place. She refused, left the parsonage, and lived as a servant, first with his brother, and afterwards in several other places. All those with whom she lived were struck with the contrast of her general cheerfulness and her occasional anxiety and gloom. As she grew older, her periods of disturbance became more frequent and more terrible. She could not bear to be alone. She spoke sometimes about a female whose recollection haunted her, and whose figure pursued her wherever she went. She could not sleep by herself; frightful appearances visited her if she attempted it.

At length she confessed to one of her fellow-servants that she was oppressed by a dreadful secret, and was advised by her to consult her priest. She followed this advice, and revealed to her spiritual director that, some years before, Riembauer had murdered a woman. That the only witnesses were herself, her mother, and her sister, and that since their death Riembauer and herself had become the sole depositories of the secret. The priest consulted several of his brethren, and, by their advice, directed her to be silent, and to leave Riembauer to the punishment of God. But silence was too painful, and she had recourse to another priest, to whom she repeated her

story, and to whom she told also that Riembauer had appropriated the whole fortune of her family. His advice, too, was to say nothing. But he endeavoured to obtain restitution of the fortune, by sending to Riembauer an anonymous letter in Latin. The letter produced no result, but must have seriously alarmed Riembauer, since he was able, many years afterwards, to repeat its contents. We copy it from his confession:—

'Habeo casum mihi propositum quem tantummodo tu solvere potes. Vir quidam, quem tu bene noscis, debet alicui personæ 3,000 florenorum circiter. Si conscientia tua vigilat, solve hoc debitum. Nisi intra quatuor hebdomadas respondeas, horrenda patefaciet ista persona. Hannibal ante portas.'

Catherine's intellect was too clear to be clouded by the sophistry or the esprit de corps which must have seduced her spiritual teachers. In 1813, when she was seventeen years old, she laid her statement before the tribunal of Landshut; but as the Bavarian law did not allow her to be sworn until she was eighteen, no proceedings seem to have followed during that year. In 1814, having attained the age to which that law ascribes veracity, she repeated it on oath, and a regular judicial enquiry was founded on it. From the minuteness with which the details are related, and from the scenic effect given to many of the occurrences, we have no doubt that the *Untersuchungs richter* was Feuerbach himself.

The following are the material parts of Catherine's deposition:—

'In June 1807, when Priest Riembauer and my sister were in Munich, the one to pass an examination, the other to learn cooking, a woman, about twenty-two years old, of large powerful make, and exceedingly handsome, came to our house, and enquired for the priest, whom she called her cousin. Finding him absent, she went into his room, behaved there as if she had been mistress of it, and looked through all the drawers in search of money. She spent the night with us, and left a sealed letter directed to him. When I mentioned the circumstance to him on his return, he said that she was his cousin, and that he owed her money.

'A few months after, on the evening of the 1st of November 1807 (the day was ascertained as being that of the great Catholic Feast of All Souls), the priest and my sister were in the house, and my mother and I were returning from field-work. As we approached we heard a noise in the upper room inhabited by the priest, and scarcely knew whether it were laughing or crying, but it sounded more like crying. At the door we met my sister running down the stairs, and she told us that a strange woman had come to visit the priest, that they had gone into his room, that she had looked through the keyhole, and had seen him come behind the woman as she was seated, and draw her head backwards, and attempt to cut her throat. While my sister on the steps was telling us this, the crying continued, and we heard the priest say, "My girl, repent your sins, for you must die;" and we heard another voice say, "Frank, do not do it; leave me

my life; I'll never come to you again for money." My mother and sister ran into our room below, I ran upstairs, and saw through the keyhole a woman lying on the ground bleeding and convulsed, and Riembauer sitting or kneeling by her, and pressing her throat with both his hands. I ran down into our room, and told my mother and sister what I had seen; and while they were doubting whether they should call in the neighbours, the priest came downstairs to us, his apron covered with blood, with a razor also bloody in his hand.

He told us that this woman had borne him a child, that she had asked him for between one or two hundred florins, and threatened him, if he refused it, to denounce him to his ecclesiastical superiors, and that, as he could not furnish the money, he had killed her. I ran into his room, and found the woman, whom I recognised as our visitor in the summer, lying in her blood, her throat cut through and lifeless. My mother protested that she would tell all, and when the priest fell on his knees before her, said that her silence would do no good, since the neighbours must have seen the stranger and heard the noise. He now threatened to destroy himself, took a cord from the stable, and ran into the wood. My mother and sister followed him, and, believing that he really would hang himself, and that his suicide would only make the misfortune greater, they at length promised concealment. He proposed to bury the body in a small room adjoining an outhouse which he had lately built; and accordingly, between twelve and one at night,

he dug a grave there, dragged the body downstairs, threw it, clothed as it was, into the grave, and covered it with earth. One shoe fell off by the way, and I saw our house-dog tearing it the next morning. Riembauer did not begin to wash out the blood in his room until the next day, and then it had sunk in too deep to yield to water. I borrowed a plane, therefore, from the next cottage, and he endeavoured to plane out the stains. To the neighbours who asked what had occasioned so much noise and crying in our house all night, we answered, by Riembauer's order, that we had been lamenting our father's death, and some loss of property which had followed it.

She went on to say, that after this event Riembauer did not live happily with her mother and sister, that her sister had often threatened to leave him, that he was in constant fear of their betraying him, and that finally he had destroyed their evidence by poisoning them. Her grounds for this belief were the suddenness of their deaths, his having suffered no priest or medical man to approach them, and her sister's death having immediately followed her taking a draught from his hand. She was sure, too, that he had intended to destroy herself. Her sister told her that Riembauer had said that he would give three or four hundred florins to get rid of Catherine, for she was getting cleverer every day, and in time there would be no buying her silence. He had promised her an enormous sum if she would stay with him; and when she told him, at her departure, that she had forgotten nothing, he had replied, 'You will not get the best of it if you betray me.

Your mother and sister are dead, and I shall say that it was they who murdered the woman.'

Such a charge, brought by a mere girl against a man of Riembauer's respectable station and high character, obtained at first little belief. It was supposed to be the strange and frightful product of a diseased imagination. This accounts for the absence of any judicial enquiries during the long period between the first and second information. The accuser, however, showed so much calmness and intelligence; the story, with all its strangeness, was so clear, consistent, and detailed, that when, after the interval of a year, it was repeated, the court could not refuse to act on it. And as Lauterbach is at a considerable distance from Priel, the first steps could be taken without exciting the alarm, or affecting the reputation of the accused. The outhouse was found, the small room by its side, and in that room, very little below the surface, a female skeleton complete, except that the bones of the hands were wanting. All the teeth were perfect, and remarkably beautiful. No clothes, except a single shoe, are mentioned. Stains were found in Riembauer's room, which, as soon as they were moistened, showed themselves to be blood; and in many parts of the floor there were marks of a plane, which had been applied by an unskillful hand, and had pared away the planks unevenly.

Riembauer was now arrested, and taken to Landshut. On his first examination, he admitted his knowledge of the skeleton, and gave his own version of the murder and the burial. The bones, he said, were those of Anna

Eichstaedter, a person whom he had known when he was curate of Hirnheim, who had deposited with him fifty florins, her savings, and whom he had promised to take as his cook when he should obtain a benefice. From the time that he left Hirnheim, until her death, he had never seen her, though he had corresponded with her about her money; and had understood that when he was in Munich, in the summer of 1807, she had visited Thomashof, and had grieved the Frauenknecht family by telling them that he had promised to make her his cook.

'One evening,' said Riembauer, 'in the beginning of November 1807, I returned from a funeral, and went straight to my room. The door was open, and a figure was lying on the floor. I called out, received no answer, felt it, and, to my horror, found it to be a dead body. I ran below to the sitting-room, where the mother Frauenknecht and her daughter Magdalena were clinging to one another, and shaking like aspen leaves. They seized me by the hands, and half-crying, half-screaming, implored me not to betray them. Their story was, that the person who had visited Thomashof the preceding June (and whom I knew to be Anna Eichstaedter), had returned; had told them that she was to be my cook, and that they would have to remove; that this had produced a quarrel, in the heat of which Magdalena had seized one of my razors and cut the woman's throat. I told them that I must leave Thomashof; but they entreated me to stay with them, and promised to allow me any reduction which I

might wish from the purchase-money, which I had not yet paid to them. I was persuaded to stay, and moved my bed down to the ground-floor. The next morning I went out early, and when I returned in the evening, the body was still in my room. The mother and daughter said that they thought of burying it in the little room next the outhouse. I said that they might do as they liked; I would not interfere. They buried it that night. As the misfortune was remediless, and it might be hoped that, if they were allowed to live, they might atone for it by repentance, I thought it my duty, as charged with their salvation, to conceal the whole matter.'

We have seen that, until a late stage of the enquiry, a German prisoner knows nothing of the depositions against him. Riembauer, therefore, could not tell what had been Catherine's evidence. But Feuerbach remarks, that if he had heard every word of it, his own statement could not have been more skillfully framed. Ordinary criminals, when they are first examined, deny everything. Intelligent ones endeavour to assume the frankness of innocence. In order to give credibility to their denials and explanations, they admit what they know must have been proved, so far, at least, as such admission does not amount to pleading guilty to the whole charge.

There can be no doubt, indeed, that his story was ready prepared. For six years the chance of detection had been before him. He must have decided what he should do, and what he should say, in every contingency. And his decision had been, not to pretend anything so improbable

as ignorance of the whole matter, but to admit both the fact of the murder, and that the widow, her daughter, and he himself, were privy to it. The catastrophe and the *dramatis personæ* remained unaltered; all that he did was to transpose the characters. He converted Magdalena from a witness into a perpetrator, and himself from a perpetrator into a witness. He endeavoured also, but apparently without success, to suborn some of his friends to swear that Magdalena had confessed to them that she was the murderer. Most of his letters were intercepted. One of them is given by Feuerbach. It is addressed to a priest, and implores him to give the requisite testimony in consideration of their mutual affection, of the grief with which his conviction would fill his friends, of the reproach which it would throw on the clergy, and of the scandal which it would be to the believers among the laity.

The enquiry was now directed towards Anna Eichstaedter. It was soon proved that there had been such a person — that she had been remarkable for her tall powerful figure, and handsome features, and particularly for the beauty of her teeth; that she had lived as cook in the parsonage of Hirnheim in 1803, when Riembauer was curate there; and that she had borne him a daughter, who was still living. Riembauer, it appeared, supported the child, and had contributed to the support of the mother until the beginning of 1807, when the purchase of Thomashof, and his buildings and improvements there, embarrassed him. This occasioned her visit to Lauterbach in June. In consequence of the letter which she left for him, Riembauer soon afterwards

went to Ratisbon, gave her some money and promised more, but strictly enjoined her not to come near him at Lauterbach. He was unable, however, to keep his promise, and she engaged herself to a priest residing at P——, about fifteen or sixteen miles from Lauterbach; but requested leave, before finally entering his service, to visit her friends.

In the afternoon of the 1st of November, 1807, she left her new master's house, taking with her an umbrella with the priest's initials P..D. engraved on the handle. From that time she had never been heard of. Until the discovery of her remains, it had been supposed that she had been drowned in one of the torrents which cross that mountainous country, and her body swept into the Danube; or that she had been destroyed by a notorious brigand, who at that time infested the neighbourhood of Ratisbon, and who was executed the next year. A few days after her disappearance, the priest of P——, suspecting her to be at Thomashof, wrote to Riembauer, and begged him to tell her that, if she had changed her mind as to entering his service, he wished to have his umbrella returned to him. Riembauer's answer was, that he knew nothing about her or the umbrella. It was found, however, in his possession, still marked with the initials of its original owner.

It was further ascertained that Riembauer had lived a very dissolute life, and that his profligacy, and the necessity of concealing it, had led him into expenses far exceeding his lawful means, and supplied therefore by fraud and extortion. One of Catherine's accusations,

that he had been the active cause of the deaths of her mother and sister, was not substantiated. It was proved, indeed, that during their illness Riembauer had kept them secluded, and had allowed no priest or professional man to approach them, but when their bodies were disinterred no decisive traces of poison were found. The better opinion seemed to be, that they had caught from an Austrian soldier, whom they had received and nursed in the parsonage, the military fever then raging in Bavaria, and had died naturally, though perhaps from want of attention and medical treatment.

In England the matter would now have been ripe for decision. That on the 1st of November, 1807, Anna Eichstaedter was murdered at Thomashof would have been considered as proved. All that a jury would have had to decide was, whether they believed the statement of Catherine or that of Riembauer. There was no physical improbability in Catherine's story. Anna Eichstaedter was indeed a vigorous woman, but Riembauer was a powerful man, and probably exceeded her in strength as much as she exceeded the generality of women. It was, without doubt, morally improbable that a man of reputation for piety should have been guilty of a frightful crime; but against this were to be set far greater opposing improbabilities. In the first place, there was a physical difficulty in Riembauer's narrative. Magdalena was small and weak; it seemed impossible that she could have overpowered a tall strong woman. Then her mildness and softness of disposition were as

remarkable as Riembauer's sanctity. In her case, too, there was almost an absence of motive. She could have had no hatred of Anna Eichstaedter, for she had never seen her before, and she could not have hoped to retain her place in Riembauer's household by committing a murder almost in his presence. On the other hand, Eichstaedter's death relieved Riembauer from an enemy who threatened to ruin his reputation, stop his advancement, and perhaps destroy his means of existence.

The subsequent conduct of the parties, too, is consistent only with the theory of Riembauer's guilt. At first sight, indeed, it seems strange, on that supposition, that the widow and her daughter should have continued to live with him. But they had venerated him up to that time; he had subjected their minds by the ascendancy of his station, talents, and knowledge; he was their spiritual director, and he had made himself master of their property. On the other hand, if he were innocent—that he a man, as he represented himself, of scrupulous piety, should have shielded a murderess and her accomplice, should have allowed them to bury in his own outhouse the body of his murdered friend, and should have retained them till their deaths as his sole domestic associates, is inconceivable.

He would probably have been tried at the first assizes after Catherine's information was laid; the proceedings could scarcely have outlasted one day; and unless there were some technical flaw, unless the copyist perhaps left out in the indictment the words 'then and there,' or wrote

Eichstaedter's name Hannah, instead of Anna, or Mary instead of Maria, the judge would have summed up unfavourably, and the jury would have convicted him without leaving the box.

Such a decision, obtained by balancing conflicting improbabilities, however deeply the preponderating scale may incline, does not satisfy a German jurist. In the first place, the proof of the *that-bestand*, the physical fact of the murder, was imperfect. The wound, which had caused death by dividing the arteries of the neck, had reached no bone. The skeleton, therefore—and, after six years, only a skeleton remained—showed no injury, and the *that-bestand*, as we have seen, ought to be proved by inspection. And secondly, Catherine was only a single witness, and her evidence, therefore, only a half proof. The *Untersuchungs richter*, therefore, who had no more doubt as to Riembauer's guilt than an English juryman would have had, directed his whole energy, and his whole skill, to the leading or drawing him to a full confession.

But he had to deal with a man as determined, and perhaps as sagacious as himself, who had long meditated his defence, and was resolved that neither fatigue, nor shame, nor despondency, nor even the horrors of an indefinite imprisonment, should force him to assist in his own condemnation. For four years the contest continued. Riembauer endured ninety-nine formal examinations; besides confrontations with separate witnesses which Feuerbach calls innumerable. The depositions filled

forty-two folio volumes. Still little progress was made. The accused generally acted the part of a persecuted Christian, who hears with patience the falsehoods and the misrepresentations by which he is assailed. If he sometimes broke into the sudden anger of a calumniated man, he instantly apologised, and relapsed into the mild tone and half smile which marked his usual demeanour.

Sometimes, indeed, in a confrontation, he assumed the dignity of a preacher, and rebuked the witnesses for their perjury; sometimes he burst into laughter at the absurdity of their inventions; sometimes he wept over his own oppressed and defenceless state — a prey to all his own enemies and to all those of the Church, inspired and directed by Satan himself; and sometimes he had recourse to the most vehement asseverations. 'If he stood on the scaffold,' he said; 'with a thousand devils before him, he could only repeat with his last breath his former story. His heart,' he assured the judge, 'was as spotless as snow. He only wished that his bosom were transparent. How was it possible that a priest could commit murder, and continue his priestly functions, knowing, as he must know, that the murder made him ipso facto irregular and excommunicated, and guilty of a fresh and mortal sin whenever he administered the sacraments? Was it conceivable that any man in his senses would touch the divine elements with hands stained with innocent blood, and incur the probability of temporal punishment and the certainty of eternal damnation?'

Feuerbach has given us, at some length, part of one of

these examinations. It began at four in the afternoon of the 1st of November, the anniversary of the murder. From that time until midnight, the judge strove to convince his understanding, by showing the separate and the cumulative force of the evidence against him, and to rouse his conscience, by urging the wickedness as well as the folly of persisting in falsehood. For eight consecutive hours he remained apparently unaffected. At length the judge suddenly raised a cloth, under which lay a human skull.

'This,' he said, 'is the skull of Anna Eichstaedter, still remarkable by these rows of beautiful teeth.' Riembauer sprang up from his chair, looked wildly at the judge, but immediately resumed his composure and his fixed smile, placed himself so as to avoid looking at the skull in front, and answered, 'My conscience is at ease. This day eight years, as I returned from Pirkwang, I found that skull, and the body of which it formed a part, lying dead in my room. If it could speak, it would say, Riembauer was my friend, not my murderer. You see that I breathe freely in its presence. I am not a criminal, but a victim.' When the whole of that long day's examination had been read over and signed by him, the judge again led him in front of the skull, and again exhorted him to repent and confess. He was not unaffected, but soon resumed his tranquillity and his smile, and exclaimed, addressing the skull, 'Oh! if you could speak, you would prove my veracity.'

At length, on the 26th of October, 1816, the enquiry was

terminated, and the papers were sent to Munich for the decision of the superior court; the court which enquires, and that which decides, being, as we have seen, always distinct. On the 1st of October, 1817 (the date is material, as showing the pace at which justice moves in Germany), the matter came on for discussion by the superior court.

How long that discussion would have lasted, or what would have been the decision, we do not know; for on the eighth day it was interrupted by a communication from the court at Landshut. On the 13th of October, the prisoner had asked for an audience, and had declared that he had prayed to the Holy Ghost to assist his memory, and was now convinced that the story in which he had persisted for four years was incorrect; and that in fact it was the widow Frauenknecht, not the daughter, who had committed the murder. It was obvious that his resolution was giving way; his appetite had begun to fail, and on the 26th he asked for another audience, on the ground that he feared his mind was becoming disturbed, and hoped that a frank confession might give him ease. In that audience he threw himself on his knees before the judge, implored that his trial might be brought to an end, said that he was tired of life, and driven almost wild by spectral appearances. Visions of those whom he had known and of others whom he had not known, appeared in his cell, and for three nights following, immediately after the Ave Maria, he had heard a dull awful sound, resembling that of a muffled drum.

But he still could not bring himself to confess. When the judge remarked that the length of the enquiry and the consequent injury to his mind and body were his own fault, he answered that his misery arose not, as the judge seemed to hint, from consciousness of unrevealed guilt, but from sleepless nights, and that he had already told all that he knew, and all that he believed. But there was something in his manner that induced the judge to return to the attack. He again went over all the improbabilities, the inconsistencies, and the detected falsehoods of the prisoner's story — again reproached him with the folly, the wickedness, and the degradation of persisting in untruth, and again urged him to relieve his conscience by a full confession. Feuerbach was a man of great powers, both of reasoning and of persuasion, and Riembauer, broken down, both physically and mentally, now gave up the contest. 'Yes,' he said, 'Mr. Commissioner, you are right. My health is sinking every day, and I feel that the best thing that I can now do is to admit my guilt. But while I take this decided step, let me implore the royal protection for my innocent children. And now you may take down my confession. Catherine's evidence is essentially true. It was I who deprived Anna Eichstaedter of life.'

The confession lasted through thirteen audiences. The material facts of the portion which Feuerbach has reported, are as follows:—

'The letters that I received from Anna Eichstaedter filled me with terror. Unless I would provide for the

child, and receive her into my house, she threatened to denounce me to my ecclesiastical superiors. The result of my visit to her at Ratisbon increased my alarm. I explained to her my pecuniary embarrassments, and the impossibility of my receiving her; but she would listen to no excuses, and could be convinced by no arguments. My honour, my position, my powers of being useful, all that I valued in the world, were at stake. I often reflected on the principle laid down by my old tutor, Father Benedict Sattler, in his "Ethica Christiana," * a principle which he often explained to his young clerical pupils—"That it is lawful to deprive another of life, if that be the only means of preserving one's own honour and reputation. For honour is more valuable than life; and if it be lawful to protect one's life by destroying an assailant, it must obviously be lawful to use similar means to protect one's honour." My case appeared to me to fall precisely within this principle. I thought if this wicked woman should pursue me to Lauterbach, and do what she threatens, my honour is lost. I shall be disgraced throughout the diocese, the consistory will remove me, and my property will perish for want of my superintendence. Father Sattler's principle became, therefore, my *dictamen practicum*; but though, from the time of my return from Ratisbon until the perpetration of the act, it was never out of my

* We have not seen this work. Feuerbach describes it as consisting of six large volumes, containing almost a caricature of the sort of morals and casuistry usually called Jesuitical. He adds that it is a favourite text-book in many places of ecclesiastical education in the south of Germany.

thoughts, I had not arranged any plan for carrying it into execution.

'The day of payment of the allowance for the child arrived and passed, and I could not send it. I had it not, and was unable to borrow it; and I lived in constant terror of Eichstaedter's appearance. At length, on the evening of All Souls' day, as I was returning to my house with Magdalena, I saw a woman enter before us, whom I recognised as Eichstaedter. I overtook her in the passage, and took her up stairs. Sattler's precept rushed on my mind; I was tempted to throw her down from the landing-place. And even now I cannot tell what prevented me. Perhaps it occurred to me that she might not be killed by the fall, and then matters would be worse than before. When we got into my room she renewed her demand, that the child's maintenance should be paid, and that I should take her into my house; and I showed to her again and again, that neither the one nor the other was possible.

Finding her deaf to all reasoning, I left her on some pretext, went downstairs, and armed myself with a knife and a razor. In doing this, I scarcely think that I was a free agent. Perplexity for the present, and terror for the future — horror at the necessity of acting on Sattler's principle, and inability to find any other means of extrication — so confused me, that I hardly knew what I was about. When I came back, she began again to storm and to threaten; and I came behind her as she was sitting, and tried to stab her in the throat with the knife. It was too blunt, and I let it fall and attempted to strangle her. It

was then that I told her to repent, for that she must die, and that she prayed so earnestly for her life. I failed again, and then took the razor from my pocket, and made a deep cut in her neck. I immediately saw that this wound was mortal. She remained standing for an instant or two, and I said, "Anna, I beg forgiveness from God and from you. You would have it so. Pray to God to forgive your sins, and I will give you absolution." And I gave her absolution—this being a *casus necessitatis*. She was now beginning to fall, and I supported her under the arms, and laid her down softly on the floor. I knelt by her side, and gave her spiritual consolation until her breath was flown. Two days after, I buried her; and as the hands had stiffened in an attitude of entreaty, they rose above the grave, and I was forced to remove them.*

'I have nothing more to relate about this melancholy event, except that I have frequently applied† masses to her soul, and that her death has always been a source of grief to me, though the motives which led me to effect it were praiseworthy. These motives—my only motives—were to save the credit of my honourable profession, and to prevent the many evils and crimes which a scandalous exposure must have occasioned. Had I not stood so high with my people, I would have submitted to that exposure. But if the faults of a priest, revered as I was, had been revealed, many men would have thought that my example

* This accounts for the bones of the hands having been the only parts of the skeleton deficient.

† The use of the technical word '*applicit*,' 'applied,' is remarkable.

justified their sins — others would have lost confidence in their clergy — and some, perhaps, might have thought religion a fable. As these calamities could be prevented only by the getting rid of Anna Eichstaedter, I was forced to get rid of her. The end was good — her death was the only means. Therefore I cannot believe that it was a crime. The same motive induced me to endure, year after year, the misery of a dungeon. As soon as I had reason to believe it to be the will of God that I should myself reveal what I had done, I made a full confession.'

So corrupt, indeed, was Riembauer's moral sense, that he believed even his hypocrisy to have been a virtue. 'My failings,' he said on another occasion, 'so far as they were failings, were the incidents to my position. They were the failings of celibacy (*coelibatssuenden*). They never disturbed my conscience; for I could defend them, both by reasoning and by examples taken from ecclesiastical history, and I think that I deserve credit for having so managed my conduct as to give no public offence.'

On the 1st of August, 1818, more than five years after the trial began, and about eight months after it might have been supposed to have terminated by Riembauer's confession, judgement was pronounced. He was declared guilty of murder, and sentenced to indefinite imprisonment in a fortress.

As the regular punishment of murder is death, it was necessary that grounds should be assigned by the court for this mitigation. These grounds were, that the *that-bestand*, the fact that a murder had been committed, was not

sufficiently proved, the skeleton showing no marks of mortal injury. And that this defect was not supplied by the prisoner's confession, as that confession was not supported as the Code requires, 'by other well-established facts, showing the accused to be a man from whom the crime imputed to him may be expected.'*

Feuerbach admits, that if Riembauer's confession were rejected, the fact that a murder was committed (the *that-bestand*) was insufficiently proved. It is true that Anna Eichstaedter was never seen alive, except by the inhabitants of Thomashof, after she left P——, on All Souls' day, 1807 — that the umbrella of the priest of P——, marked with his initials, which he had lent to her that afternoon, was found in Riembauer's possession — that just below the floor of the outhouse, which had then been in Riembauer's occupation, was found a skeleton which was recognised as hers — that the floor of Riembauer's room was still stained with blood, and still retained the marks of the plane which had been used for the purpose of effacing it — that her death rescued Riembauer from exposure, disgrace, and ruin; and lastly, that he was privy to it, and had concealed it at a frightful risk. These facts, certainly, did not exclude the physical possibility that she might have died naturally; but they rendered it so improbable, that no one can doubt that they would have been sufficient to produce his conviction from an English jury, or indeed from any tribunal not fettered by irrational rules of evi-

* *May be*, not *might have* been. *Kann*, not *könnte*. The difference, as will be seen, is material.

dence. Then came Catherine's testimony, who, though she did not see the wound inflicted, heard Riembauer's threats, heard the cries of his victim, and saw him come from the place where the death had occurred; his clothes, and the razor which he held, covered with blood.

Feuerbach, however, admits that all this amounted only to a half proof, or *semiplena probatio*; but he strongly censures the court for not having considered every defect supplied by Riembauer's confession. He first objects to the law which refuses credibility to a confession, unless the crime confessed agree with the previous conduct of the accused. 'How often,' he says, 'are men proved to have committed acts inconsistent with their previous character? How often does a judge, while he convicts, say to himself, "who could have expected such a crime from such a man?" And is a man who confesses his crime to escape its appropriate punishment, because, up to the time of committing it, he had sufficient hypocrisy to conceal his real disposition, or the good fortune not to meet with an adequate temptation?'

He goes on to object to the application of the rule to the case before him. The rule, he says, is expressed in the present, not in the past, tense. The confession is to be rejected, unless the crime confessed *may be*, not *might have been*, expected from the prisoner. Riembauer certainly was not a man from whom, *when he was first arrested*, the conduct which he confessed would have been expected. His real disposition and his real opinions were then unknown. He betrayed, or, to speak more correctly,

he displayed, them during the progress of the enquiry. He acknowledged principles of action, of which the crime which he confessed was a consequence almost inevitable, as soon as the appropriate temptation occurred. And so utter was his moral depravity, that neither experience nor the reflection of nearly five years of solitary imprisonment seems to have led him to doubt the soundness of his system; or, in the Christian sense of the word, to repent (*μεἰανοειν*) that he had obeyed it. 'Such a man,' says Feuerbach, and we agree with him, 'is a man from whom a crime like that confessed by Riembauer *may be expected.*'

An English reader, however, is far more revolted by the conclusion drawn from the premises, than by any error in the premises themselves. That the same sentence should declare a man guilty and mitigate his punishment on account of the insufficiency of the proof, appears to us a contradiction. We admit no gradation of proof. If there be any rational doubt as to the prisoner's guilt he is to be acquitted. But when once the verdict has been pronounced, the question of proof has been disposed of; it is assumed to have been perfect, and consequently it would be a contradiction in terms if its quality were to affect the sentence. The Bavarian law, as we have seen, proportions the punishment, not only to the nature of the crime, but to the nature of the evidence. And so many are the requisites to perfect proof, that unless there remain, up to the time of the trial, traces of the crime, not merely visible but indubitable — unless it were committed in the presence

of more than one witness — unless it be confessed by the accused — and unless he be a man of previously bad character — he generally escapes the punishment awarded to his offence by the law.

He does not, indeed, escape altogether. It seems scarcely possible that a man really guilty can elude the dogged perseverance of an *Untersuchungs richter* — unconfined as to the duration of his enquiry — restrained in its progress by no technicalities — allowed to collect evidence from hearsay and from accomplices, and to extort it by the moral torture of unremitting cross-examination, and by the torture, both physical and moral, of solitary imprisonment. The German public escapes the evils which frequently arise in England, from the acquittal of a man whose guilt is undoubted; but, on the other hand, it often witnesses the inconsistency of a conviction on the ground that the crime has been proved, and a mitigation of punishment on the ground that the proof has been defective.

Riembauer's crimes appear to have arisen from the predominance of his will over all his other qualities. He had a strong wish for all the objects of human desire — for power, for fame, for wealth, and for pleasure. The energy of his will enabled him to attain these objects in a degree which is remarkable, when we recollect, first, that he started in the race at the utmost disadvantage; and secondly, that, in the course which he was forced to take, the objects themselves were almost incompatible. At the age of thirteen, without education, or friends, or money, the son of a day-labourer — a person who, in Germany, ranks

between an ordinary peasant and a beggar, but approaches nearer to the latter — he conceived, and in a great measure executed, a plan which would have raised him to the highest ecclesiastical dignities. He obtained the first elementary instruction by imploring it, to use Feuerbach's expression, on his knees. The rapid progress which, beginning so late, he made in a single year, procured him admission to the public college of Ratisbon. Feuerbach tells us, that he was there an *unverbesserlicher student* — a student who in every respect, in conduct, in diligence, and in intelligence, answered the utmost wishes of his instructors. A praise scarcely ever merited even by those who have enjoyed almost every advantage was obtained by one who had to encounter almost every obstacle. If the Church of Rome had not prescribed celibacy to her priests he would probably have been, to all outward appearance, one of her ornaments.

But when he found the discipline of his Church opposed to his passions, the vehemence of his will impelled him to endeavour to elude restraints to which an humbler mind would have submitted. He engaged in the most fatal of attempts—the attempt to deceive his conscience; and his ingenuity and his casuistical knowledge and experience enabled him to succeed in that unhappy contest. He persuaded himself that what the rest of the world calls profligacy, was necessarily incidental to his priestly profession. His relations with his different mistresses he considered as temporary marriages; and he satisfied their scruples and his own by solemnising them with the rites

of his Church. Catherine saw him go through this ceremony with her sister Magdalena. His numerous illegitimate children he appears to have provided for to the utmost extent of his means. The event, indeed, showed that only on this condition could he escape exposure; but while he could do this their birth did not disturb him. 'I considered,' he said, 'the matter often and deeply. I thought on the remark of St. Clement of Alexandria, that man is never so obviously the image of God as when he assists God in the creation of a human being. To do so cannot be against the will of God, since thereby the number of the elect may be increased; nor against the will of the Church, since it adds one to the number of her communion; nor against that of the State, which gains a citizen and a subject. My conscience, therefore, gave me no uneasiness.'

We readily believe that it gave none. He was able to extract from what has been called the oracle within the breast, whatever responses he wished for. And this is the most instructive part of his story. He is the most remarkable instance that we know of the power and the danger of self-deception. Other men have committed crimes as atrocious and as premeditated as those of Riembauer, and with as little remorse; but their conscience has been made torpid by ignorance and brutal unreflection, or has been seduced by example, or has been perverted by the flattery and apparent sympathy of those around them. The great mass of uneducated criminals belong to the first or the second class; tyrants, whether royal or revolutionary, to the third.

Riembauer had not the sluggish disposition which does not hear the remonstrances of conscience, nor the carelessness which does not heed them. The nature of his actions and their consequences, not only in this world but in the next, seem to have been among his habitual subjects of meditation. He was not the victim of example or of sympathy. He knew that the moral code which, with the help of the modern casuists and the ancient fathers, he had constructed for himself, would not be accepted by the society in which he lived. His worst crimes, indeed, arose from his belief that if his general conduct were known he would be despised and degraded. He had no external aid in his contest with conscience; yet so complete was his victory that he forced her to admit the most glaring sophistry, and to sanction the foulest crimes — profligacy, robbery, perjury, and murder. We are inclined to believe, indeed, that if a man sets seriously to work to argue with his conscience, there is scarcely any error into which he cannot seduce her. Under no circumstances does she appear to be an infallible adviser; but when she opposes, she is generally a safe one. She frequently is mistaken when she actively approves, still more frequently when she barely acquiesces: but when she yields after a struggle she is almost always wrong.

It may be interesting to compare Riembauer's crime with one of perhaps still greater atrocity, perpetrated by persons who in almost every respect — in talents, in knowledge, in disposition, and in habits, were not merely

dissimilar to him, but almost opposite. For this purpose, we shall avail ourselves of Feuerbach's history of the Schwartz-muhle family.

The scene of the remarkable events which we shall relate, was a valley in the Fichtel Gebirge, the mountainous plateau separating Franconia and part of Lusatia from Bohemia.

Several causes have contributed to render the Fichtel Gebirge one of the rudest parts of Germany. The climate is uncertain, but generally severe; the inhabitants, when we visited their country, described to us their year as consisting of nine months winter and three months bad weather. Sharp frosts are frequent even in the latter end of June. Although there are fertile strips in many of the valleys and by the sides of many of the streams, the greater part of the soil is unproductive, either intrinsically, or from its height or steep inclination. Even now, when all Germany is bent on improving its communications, the roads are few and bad. At an earlier period they must have been almost impassable, except in hard frost, or after long dry weather. Under such circumstances, the population is thin, and more pastoral than agricultural; and they have frequently engaged in other pursuits which have not improved their character. The difficulty of the country, and its central position, filled it for some centuries with robber knights, who converted the granite peaks of the hills into almost inaccessible fortresses, and had at their mercy a great part of the transit between the north and south and the east and west of Germany. The annals of

the neighbouring towns, Eger, Wunsiedel, Hof, and Baireuth, are filled with narratives of contests with the freebooters, and of the expeditions by which they were all ultimately extirpated. A small wood among the roots of the Schneeberg, through which the road from Nuremberg to Eger winds, between the castles of Rudolphsteni and Waldstein, became so dangerous as to receive the name of Hell (*Holle*); a name which it still retains, though the robber castles were destroyed — the one by an expedition from Nuremberg, the other by the burghers of Eger, two centuries ago.

Then followed the search for mineral wealth. The mountains are generally metalliferous, and are supposed to have been the first scenes of mining operations in Germany — operations which continued for many centuries. The *detritus* of the streams, which of course are numerous, afforded tin in considerable abundance, and was supposed to yield precious stones; and in many of the rivers, a mussel is still found which contains an inferior pearl. The tin washings, however, have shared the usual fate of metallic washings and have become exhausted — the mines have been ruined by the rivalry of richer districts, or by the admission of water during the wars of which a frontier country is often the seat; and the pearls are no longer worth the expense of obtaining them.

Another industry, however, arose during the last century, and still continues to prosper — that of the smuggler. Half a dozen different states had their frontiers and their custom-houses among the roots of the Fichtel Gebirge;

and although exchanges of territory, the absorption of the smaller sovereigns, and, above all, the union of Prussia, Saxony, and Bavaria, in the Zollverein have legalised trade between the north and the south, the blind prohibitory system with which Austria was cursed by Joseph, and from which she is scarcely beginning to extricate herself, renders Bohemia an attractive market for contraband Saxon, and even French and English, manufactures. The Austrian government is too poor to watch adequately her enormous frontiers. We have ourselves entered by the Fichtel Gebirge without showing a passport or meeting a custom-house officer, and in a carriage which (without our knowing it) was almost filled with prohibited goods. And there are some Bohemian products, particularly glass and porcelain, which supply the smuggler with a return cargo.

When we add that there are few towns, and no resident gentry, and that the clergy are raised but little by birth, or knowledge, or habits, above their flocks, the existence of an ignorant and superstitious population may be inferred.

Brownies are still found who do the housemaid's work. Dwarfs inhabit the clefts of the rock until they are driven away by the noise of the forges, and the profane language of the workpeople. Kobbolds, and other malicious spirits, dwell among the ruined forts and heathen places of sacrifice—mislead the traveller, destroy the cattle, and foretell misfortune by voices and screams in the night. Sometimes they flutter above the fields in the shape of ravens

or of owls, and shed an evil influence on the crops over which they hover. An exorcist, therefore (*geisterbanner*), is to be found in almost every district, and at certain periods the whole population turns out against their unseen enemies. On St. John's eve fires are lighted round every village, and the young people jump over them to preserve the flax from frost. On May-day eve they smack whips in the streets to frighten away witches, who, it seems, cannot abide that noise.

The most prevailing superstition regards the existence of hidden wealth, and the means of detecting and possessing it. It is believed that the Pagan priests, who made the Fichtel Gebirge their last stronghold, and were not completely extirpated till the twelfth or even the thirteenth century, concealed vast treasures in their mountain fortresses and their Druidic temples. Others were buried by the robber chiefs, when they saw that their own destruction was imminent. Some of these have been discovered; but in general they are protected by spells. Our guide to the Louisenberg showed to us, in the Alte Schloss, one of the most remarkable points on that mountain in ruins, the spot under which one of these treasures still lies. It consists of a copper chest three feet square, full of golden florins, above which is a vessel, also of copper, containing a crown covered with diamonds of which a king was robbed in the heathen times. It is to be won on the Epiphany by a monk dressed in black, dwarfish, and limping, by means of ceremonies which our guide could not or would not reveal. Indeed, the failure

of many attempts to perform them leads to the suspicion that the tradition has been lost.

The riches, however, still concealed in the virgin recesses of the mountain, under the custody of the spirits of the earth, far exceed, as might be expected, all that have passed into the dominion of man. From time to time, human eyes have been dazzled by a glimpse of them. On the summit of the Ochsenkopf, immediately opposite to the church-tower of Bischofs-grun, on the other side of the valley, is a *geister-kirche* (a church for the use of supernatural beings), adorned with unutterable wealth. The entrance is by a fissure in the rock, which begins to expand when the church-bell rings at Bischofs-grun, is wide open when the priest begins to read the gospel of the day, and closes with a crash as soon as he has finished. Several persons now living at Bischofs-grun are believed to have entered it, and to have taken away some of its treasures; but they would scarcely be safe if they were to talk about it. Some years ago, a new married couple, wandering on their wedding day over the mountain, found a cave, from the roof of which pure gold hung in fringes. They gathered as much as they could carry, and at the foot of the mountain examined their spoil; but the instant they began to exult over it, it changed into mere gold-coloured moss.

In this wild region, on the side of the deep rocky glen through which the Sittenbach flows, stands a solitary corn and saw-mill, called the Schwartz-muhle, or Black Mill. It was inhabited in 1817 by the Kleinschrot family,

consisting of a father, about sixty years old, his wife, five years younger, two sons; Konrad and Frederic, aged twenty-eight and twenty-four, and two daughters, Margaret and Kunigunda, the first twenty-three, and the second eighteen. The only neighbouring building is a cottage within the yard, which was then inhabited by a labourer, Wagner, and his wife and children. With the exception of the father, the Kleinschrot family were eminently popular among their neighbours; they had a high reputation for integrity, industry, and friendliness. They had naturally indeed but little intelligence, and that little had not been much cultivated; they were, therefore, ignorant and superstitious. But such were those around them, and their moral excellence more than made up for their intellectual deficiency.

The father, however, was in every respect a contrast to all the rest of his family. He was a man of considerable talent, and, for that country, well-informed, but almost as bad a man as can be conceived. He was, indeed, a regular church-goer, and a regular communicant, but these observances seemed to have formed the whole of his religion. He had been an unnatural son—had threatened and almost attempted his father's life, and forced him to protect himself by converting his bed-room into a kind of fortress. At the time of the events to which we proceed, the door-posts retained the marks of the efforts made by the son to break into it. His wife he had so long and so frightfully ill-treated, as seriously to impair her mind. His children he seems to have hated from their birth. As they

grew up, he made them his servants — for his temper was so violent that no one else could be hired to live with him — and rewarded their diligence by curses and blows, and by scarcely affording them the necessaries of life. More than once, when one of his sons, from his ill-treatment, was incapable of leaving his bed, he would not allow him to be fed. No one, he said, should eat who could not work. To complete the picture of a thoroughly selfish domestic tyrant, while he half-starved his family, he was wasting his property, the greater part of which he had derived from his wife, on his own unlawful pleasures. The neighbouring villages were full of his mistresses and of his illegitimate children.

The cruelties and threats of their common enemy, and their own affectionate dispositions, created the closest union between the rest of the family; and from the time that the sons were old enough to afford some protection to one another, and to their mother and sisters, the Schwartzmuhle became the scene of unintermitted domestic war between the father on the one side, and the mother, sons, and daughters, on the other. The latter several times endeavoured to obtain redress from the local authorities; but the answer of the Landgerichter, or provincial magistrate, always was, 'Nothing is to be done for you — you have a bad husband and a bad father, and there is no cure for it while he lives.' But of his death there seemed no chance, and both his profligacy and his ferocity increased as he grew older. He took a low woman into his house, and threatened to make her the mistress of it; he attacked his

wife with an axe, wounded her severely, swore that he would kill her, and probably would have done so, if his younger son, Frederic, had not rescued her, at the cost of serious injury to himself. For some nights after that event, both mother and son slept in the stable, as they thought their lives in danger in the house.

At length the family rose in open rebellion. They seized the keys, assumed the direction of the mill and farm, and in fact deposed the elder Kleinschrot. It was now his turn to invoke the law, and he did so with success. The court ordered the wife and children to restore to him the control over his own household; and, on his complaining that the order was disobeyed, commissioners were sent to the mill to enforce it. An apparent submission was yielded; but the mutual hatred of each party broke out, even in the presence of the commissioners; and the family expressed a settled determination to obtain redress for the profligacy, extravagance, and cruelty of the father, and protection against his threats and violence.

This occurred in June 1817. In the following October, Barbara Kleinschrot, the mother, stated to the provincial magistrate, that on the 9th of the preceding August her husband had disappeared, taking with him all the money that was in the house. She prayed that he might be publicly summoned, and that orders for his arrest might be sent to all the neighbouring towns. This was done; and, as no result followed, a committee of his estate was appointed. A year passed not only without his appearance, but without any trace of the direction in which he had fled.

No one had seen or heard of him since the 9th of August, 1817. A rumour now spread that he was dead, and that his own family had been concerned in his death. It owed its origin to some remarkable expressions of Wagner the labourer. He had said to one of his fellow-workmen, 'If you knew what I know, you would be astonished. If I were to tell what I can tell, the mill would be shut up, and all the family in prison. If I want money they must give it to me. If I want to be the owner of my cottage, they must give it to me.'

A formal enquiry was set on foot. Wagner, and the mother and sons, were examined, but all protested their ignorance. A witness deposed, that during the hay harvest of 1817, Kleinschrot had employed him to accompany him to a neighbouring town, and to carry a bag of money, which, by its weight, must have contained more than 2,000 florins. It seemed most probable that he was still alive, wasting in profligacy the property which he had carried off. Several years passed without his reappearing, or any trace being found of his fate. The mill and the estate were managed by the widow and her sons and daughters, whose wealth and high character rendered them the principal persons in their immediate neighbourhood. And but for a concurrence of remarkable accidents, they would probably have been now living, the objects of general esteem and regard.

In the autumn of 1821, the provincial judge of the district — the magistrate before whom all the legal proceedings which have been mentioned took place — was

accused of malversation, and suspended. A member of the superior court, whom we believe to have been Feuerbach himself, was sent down to install the successor, and to superintend the delivery of the records of the office. On the night of his arrival, a fire broke out in the archive room, which destroyed a great portion of the documents, and was very near consuming the whole. Circumstances pointed out the suspended magistrate as the incendiary, and it was inferred that the archives must contain matter inculpating him. They were, therefore, accurately examined, and among them were found all the proceedings relative to Kleinschrot and his family.

It appeared to the judge that the enquiry as to the circumstances attending Kleinschrot's mysterious disappearance had been abruptly discontinued—so abruptly as to lead to a suspicion of bribery; and the four years which had now passed without his being heard of, rendered the story of his flight improbable. He resolved, therefore, to recommence the investigation, and began by examining, separately, Wagner and his wife, Anna. Wagner's first examination produced no result. He merely repeated protestations of ignorance. But the wife acknowledged her belief that Kleinschrot had been murdered by his sons, with her own husband's help, and even indicated the spot where the body was to be found.

The judge now returned to Wagner, and reexamined him, with the usual success. He confessed that one morning in September 1817, the elder son, Konrad, told him that the whole family—mother, sons, and daughters

—had determined that in self-defence they must that night put to death the elder Kleinschrot, and had asked his assistance, which, after much hesitation, he had promised. That the thing had been done the same night, and the body had been at first buried in the saw-mill, and then among the rocks. This examination took place on the 6th of December, 1821. Wagner and his wife were detained; and the next day, the magistrate, with his attendants, went to the mill, found the whole family assembled at evening prayer, and, as soon as that was finished, put them under arrest, each in a separate room. The mother and sons were examined, but confessed nothing. All they knew was that Kleinschrot had been absent and unheard of for several years.

The next day Wagner was required to point out the spot where the corpse was to be found. He led the party up the precipitous side of the ravine in which the mill is situated, and then along the table-land at the top, until they came to a cleft in the rocks, into which he said that the body had been thrown, and covered with moss and leaves, over which stones had been heaped. Accordingly, after some loose stones had been removed, they found a layer of leaves, earth, and moss. 'Now,' said Wagner, 'we shall soon come to the body.' And immediately below appeared, mixed with some remains of linen, a skull, several ribs and vertebræ, and some thigh and shin bones, which the accompanying surgeon declared to be those of a man, and which Wagner recognised as those of Kleinschrot, not only as having been present when they were thrown there

but from the remarkably fine teeth, which still remained uninjured, in the lower jaw.

The bones were now arranged close to the cleft in which they had been found, and the children were led to them, each separately. Konrad, as soon as he saw them, without waiting for a question, exclaimed—'That is my father—but I was not the person that did it!' Frederic, the younger son, looked at them without apparent emotion, and to the question if he knew whose remains they were, answered, 'I see some bones, but whether they belonged to a brute or to a man, I cannot tell. I know nothing about the bones of men or of brutes.' The younger daughter, Kunigunda, cried out—'I know about my father, but nothing about what happened up here. I am innocent, quite innocent.' All that the elder daughter, Margaret, said was—'I am innocent of the act. I knew nothing about the matter, till I heard my father's scream—and then it was too late. Since then I have never had an hour of peace. Good God, what will become of us!'

The secret which had been kept for so many years, and, but for the indiscretion of Wagner, and the frankness of his wife, might have lasted for ever, was now revealed. A father of a family had fallen under the hands of an assassin, hired, and probably assisted, by his own wife, his own sons, and his own daughters.

The prisoners seem to have belonged to the class which Feuerbach states to be a large one—those who, when they see that detection is probable, give up all hope, and by a full avowal escape the labour of defence, and the anguish

of doubt. Their different confessions contain few discrepancies, and those immaterial, and we extract from them the following narrative:—

The remark of the magistrate, that they had nothing to hope while Kleinschrot lived, sank deep into the minds of his wife and children. It seemed to justify their desire for his death, and encouraged them in dwelling on it among one another. Among persons whose range of thought was narrow, this one idea became predominant. They ventured even to express it to strangers. About a year before the murder, one of the sons said to a neighbouring forester, that he wished some one would mistake his father for a deer; and the mother added, that a sportsman who had made such a mistake would never have to buy meal during his life. Similar expressions escaped from them in the presence of other persons; but the mother and sons, while they admitted the language, denied that it ever amounted to a serious proposal. They would have been glad if the thing could have been done, but were not prepared to be active in procuring it.

While they were in this state of mind, a tempter was thrown into their way. Wagner, the labourer, entered their service in the beginning of the year 1817. He had been born in the same village, and was then aged about forty years, of which he had passed nearly twenty-five as a soldier, first in the Bavarian, and afterwards in the Prussian, service. Of his military life nothing more is known, but it was recollected that, as a boy, he had been remarkable for childish cruelty. One of his favourite

amusements had been to catch birds, put out their eyes, and turn them free again.

Feuerbach himself, accustomed as he was to all the forms of depravity, seems to have been struck by his utter insensibility. He seems to have been without pity, or shame, or remorse, or even fear. Familiarised, by long military service, to the infliction of death, and to the endurance of danger, he was as ready to undertake a murder as any other piece of task-work, provided the pay were equal to the risk. The year 1817, in which he entered the service of Kleinschrot, was the dreadful year of famine, which all Germany recollects with horror. Wagner had married a widow with two children, and two more had been born during the marriage; he had, therefore, six persons to support, and, as he was neither a skillful nor a diligent workman, his earnings became inadequate. He and his wife and children sometimes passed a day without food. Their common labours threw him and Konrad, the elder son, constantly together. He heard Konrad's bitter complaints of his father, and wishes for his death. He knew how easily this could be effected, and he foresaw that, if he could make the family his accomplices, he should obtain not merely the nominal price of his services, but an indefinite command over their property.

He seems to have begun the work of temptation on the 1st of May, 1817. On the evening of that day, as Wagner and Konrad were at work in the mill, Konrad complained that his father had left the house the night before, taking with him all the ready money, and that the family scarcely

knew how they should manage till his return. 'It is a pity,' said Wagner, 'that somebody did not follow him, knock him on the head, and take the money. It would have been easy to catch him in the *Hinter Hof* (a dark ravine, about two miles from the mill), and bury him among the rocks.'—'Could you do such a thing?' said Konrad.—'Certainly I could,' answered Wagner. Konrad then objected that a murdered man, especially so wicked a man as his father, would not rest in his grave, and that they should be haunted by his ghost. To which Wagner replied, that he knew a way to keep ghosts quiet. It appears from Konrad's confession that the subject was often recurred to, and in time became the habitual subject of conversation whenever he was alone with Wagner. The only objections that he made were the fear of failure, or of being detected, or of being haunted. All which Wagner treated with contempt.

It is probable that, finding Konrad unprepared for direct violence, Wagner thought that he could lead him to it gradually by engaging him in an indirect attempt on his father's life. The whole family supposed Anna Wagner to be a witch. Frederic assured Feuerbach, that with his own eyes he had seen her bewitch a haystack, and send it flying through the air. Acting on this belief, Wagner proposed to Konrad to get rid of Kleinschrot by witchcraft. For this purpose the mother, who thoroughly approved of the scheme, gave Anna Wagner one of her husband's stockings. The witch muttered some words over it, hung it in the smoke of her chimney, and

promised that, in four weeks, Kleinschrot should wither away and die. Four weeks, however, and more elapsed, and Kleinschrot retained his usual health. To Konrad's complaint Wagner answered — 'Well, since this has failed, I will get rid of him for you in some other way.' The ready acquiescence of the mother and sons in this attempt at incantation, and their regret at its failure, showed that their consciences offered no opposition to Wagner's temptation. They felt that the father's existence was a source of constant misery and danger to all concerned with him, and up to the last hour, up to the time when all trace of them is lost in their own civil death, they believed that they had a moral right to put an end to it.

Their fear of detection, however, and of the ghost of a murdered man, was unremoved; and it seems doubtful whether it would have been overcome by the mere continuance of Kleinschrot's ill-treatment. But he took new measures, which filled them with well-founded terror. He proposed to use the right — we believe a mischievous one — which a German father possesses, of sending out his sons on *wanderschaft*; that is to say, to travel for three years, supporting themselves by work or by alms. The sons indeed, as regarded themselves, would have been ready to seize any means of escape from their domestic prison; but it was obvious that the mother and daughters, and especially the mother, would be utterly at the father's mercy; and his threats and his conduct had shown, that not merely would all the means of comfort which his brutality had left

to his wife be destroyed, but that even her life would be in danger.

Kleinschrot, first verbally in June, and afterwards in July, requested the local authorities to compel his sons to travel; and having received a dilatory answer, employed himself for several days, in the beginning of August, in writing what his family suspected to be a formal petition requiring the immediate interposition of the court. Early on the 9th of August, Frederic crept into his father's room, found the paper on which he was employed, took it upstairs, and read it to his mother and Konrad. It was destroyed after the murder, and no one at the trial could state more of its contents than that it was a requisition to the court to remove the sons. As soon as it had been read, the mother and Konrad declared that the time for getting rid of the husband of the one and the father of the other was now come. Which of them first gave utterance to their common feeling was forgotten at the time of the trial, but it was admitted that the other instantly assented. Frederic was not prepared for such an extremity. It would, he said, be a dreadful mischief (*ein rechter Unheil*—there is no English equivalent); but when he was reminded of the state of destitution and danger in which his mother would be left if her sons were forced to travel, he replied, 'Well, if you say it must be so, let it be so. I agree to everything.'

The means were then considered, and it was decided that the thing should be done by Wagner that very night, and that Konrad should go and engage him. The two

sisters now came into the room, and Konrad told Margaret, the elder, that it was intended that their father should be got rid of by Wagner that night. Like Frederic, she objected. Their father, she said, was a bad man, but it would be better to leave his punishment to God and to his own conscience. Konrad's answer was, that it was quite true as far as their father was concerned, but what was to become of their mother when her sons were driven away? Then she said that Wagner was a wicked man, and would ruin them all if he could get any money by it. To which Konrad replied (as the event proved, with truth) that Wagner could not ruin them without ruining himself at the same time. Here the conversation seems to have ended. Kunigunda, the other sister, merely listened in silence, and Konrad went out to hire Wagner. Their bargain was very short. Konrad asked him if he was ready to kill Kleinschrot that very night. Wagner said that he was. Konrad then offered him two hundred florins for the job, and Wagner accepted the terms without remark.

In the afternoon they met again, but Konrad's fears had returned. He asked Wagner if he really thought that he could do it, if he was sure that the ghost would not haunt them, and if he was certain that it would never be found out, and begged him to consult his wife. Wagner satisfied him on all these points, and they proceeded to arrange the details. Kleinschrot's bed-room opened into the kitchen. It was decided that as soon as he went to it, which he usually did at ten at night, Wagner should be summoned by Konrad,

and should post himself, armed with an axe, in the kitchen, beside the bed-room door; that all the rest of the family, except Frederic, should go to bed, and that Frederic should go into the mill and ring the mill-bell. The sound, it was supposed, would immediately draw Kleinschrot from his bed-room, and as he entered the kitchen, Wagner could strike him down with his axe.

In the course of the evening this resolution was known to all parties. Frederic at first objected to the part assigned to him. His father, he said, always visited the mill in the course of the night; why could not Wagner wait till then? At length, however, he consented. The elder daughter maintained, in her examinations, that she had endeavoured to persuade Konrad to abandon the whole scheme; and the younger daughter, that she had objected to it; and Wagner's wife said, that she had tried to dissuade her husband. But the opposition of none of them went beyond a mere expression of disapprobation. They all were present at the supper-table that evening, where Kleinschrot sat surrounded by his wife, his sons, his daughters, and his two dependents, everyone of whom knew that he was not to survive the night, but not one of them gave him the slightest warning.

After supper, Wagner and his wife returned to their cottage in the yard, and the two girls employed themselves in some domestic work. At ten Kleinschrot went into his bed-room. Konrad then desired his sisters to go to bed, sent his brother into the mill, and summoned Wagner, who took his station in the kitchen by the chamber

door. Konrad then went into his own room, and sat on the bed to wait the event. The mill-bell began to ring violently, and Kleinschrot came undressed from his room. Wagner struck him as he entered the kitchen, but not effectually. A wrestle followed, during which Wagner drew a knife from his pocket and stabbed him. Kleinschrot, however, was a very powerful man. Wagner had dropped both his axe and his knife, and it is doubtful what the result would have been, if Konrad, alarmed by his father's cries, and by the noise of the struggle, had not come from his room and handed to Wagner a billet of wood, with which he struck Kleinschrot on the head until he fell backwards on the hearth. Still he continued to groan, the blow, from the proximity of Wagner to its object, having lost part of its force. Wagner now seized one of the bricks on the hearth, and continued striking Kleinschrot's head with it, until, from his victim's ceasing to move or to groan, he supposed him to be dead. He then called in Konrad, who had run back into his bed-room, and Frederic, who was still in the mill; told them that he believed that the thing was done, and asked for a light.

They found Kleinschrot still gasping. Wagner asked for a string to strangle him. Frederic took one from his pocket, but before it could be applied Kleinschrot had ceased to breathe. The body was taken back into the bed-room. Wagner refreshed himself with a glass of brandy, and went home to rest after his work. Konrad went up to his mother, and cried out to her — 'Mother, it is done! But if it were not done, it never should be done.'

But the mother, according to her own confession, did not join in his grief, or in his repentance. Her husband, she said, had been so wicked a man, that she believed that God himself had moved them to put an end to him; and this belief never deserted her. At her last examination, when asked if she thought it would go well with her after death, she answered — 'I certainly think that it will. I have been so miserable in this life, that there would be no justice if I were not to be rewarded in the next.'

As for the two girls — knowing as they did what was to happen — they had gone quietly to bed and to sleep. They were awoke by their father's screams, but never stirred; and when the noise was over, slept again till the morning. The next day, which was Sunday, they passed at a fair in the neighbourhood, being afraid to remain at home in the same house with the unburied body. They never spoke to their mother or to their brothers about the events of the night, and seem to have remained ignorant of the details up to the time of their arrest. The two brothers, too, spent the day after the murder at a fair, not, as they said, for pleasure, but because they had been invited, and their absence would have been remarked; and several times during the day they escaped from the crowd, and knelt to pray forgiveness for what they had done. In the mean time Wagner's wife washed away the traces of blood, and Wagner dug a pit under the floor of the mill, and the next day he and Konrad buried the body, and stamped the earthen floor even, while the mother stood at the door repeating prayers. In this grave

it remained undisturbed until the family were alarmed by the enquiry which took place the next year. Konrad and Wagner then disinterred the remains, and concealed them in the cleft of the rock, where they were ultimately found.

In this case, as in Riembauer's, we should have thought that the proof was complete, and that it only remained to pronounce the sentence. But, according to German notions, the evidence was imperfect.

There was the constantly recurring difficulty of the *that-bestand.* A large portion of the skeleton was wanting, probably having been carried away by foxes or wolves; only a part of the skull remained, and it was impossible to say whether the fractures which it showed had been made during life, or during its repeated removals. For all that could be inferred from the inspection of the remains (technically the *augenshein*), Kleinschrot might have died a natural death. The confessions of the prisoners, which, according to the Bavarian law, were evidence not only against themselves respectively, but against one another, might have been supposed to supply this defect. But that law requires, as we have seen, that, when a violent death cannot be inferred from the remains, the witnesses should prove that they saw injuries inflicted which must in all cases cause death, or which actually did occasion death in the case in question. That Kleinschrot received several blows on the head and a stab in the body, and died immediately afterwards, was proved. But the nature of these injuries was not proved. It was not shown that separately

or collectively, they were necessarily mortal. And it appeared to the court, and to Feuerbach himself, that it was not proved that they had occasioned the death in question. He admits, indeed, that no reasonable man could doubt it; he suggests no other theory to account for Kleinschrot's death; but he maintains that, the nature of the injuries being unknown, there was not judicial evidence establishing between them and the death the relation of cause and effect. All parties, therefore, were acquitted of murder.

It is probable that, if there had been no other alternative, they would still have been punished, as Riembauer and several others, whose cases are related by Feuerbach, were, as guilty, not of murder, but of being justly suspected of murder. But this strange sort of criminal equity was not necessary. The Bavarian law considers the attempt to commit murder a crime next in degree to murder itself. That this crime had been committed, there was proof sufficient even for a German court; and the only question was—to what extent the different prisoners were concerned in it.

Wagner and Konrad were clearly principals, and as the murder which they had attempted was most aggravated—that of a father by a son and of a master by a servant—they were sentenced to the severest punishment awarded by the law to that offence—civil death—which involves a forfeiture of all property, and perpetual and solitary imprisonment in heavy chains. The irons, says Feuerbach, in which they were to die, were riveted on them.

According to us, Frederic was also a principal. Though he at first opposed the murder, he afterwards not only acquiesced in it, but rang the mill-bell, whose sound was intended to attract, and actually did attract, his father to the spot where Wagner was standing in wait for him. And when the result of the attack seemed doubtful, he supplied the string with which the assassination was to have been completed. The court, however, decided that he was only an accessary of the first class, and sentenced him to imprisonment for fifteen years.

Next came Barbara, the mother. She would also, according to the English law, have been a principal. It was for her sake that the murder, or, according to the decision of the court, the attempt to murder, was perpetrated. She had long been anxious to bring it about—she had supplied the means of effecting it by magic. It is doubtful whether, when the paper found in Kleinschrot's desk was read over to her, she was not the first to suggest it. She admitted that she cordially approved it, and that, when Frederic remonstrated, she overruled him with the remark that it was useless to object, since no other course was open to them.

This was the view taken by the judge who conducted the enquiry, whom we believe, as we have already stated, to have been Feuerbach himself. But it was not that of the court. The decision was, that, as it was not proved that the prisoner was the person who, after the reading of Kleinschrot's paper, first proposed the murder, or that she formally authorised Konrad to employ Wagner

to effect it, or that, after the family council was ended, she took any further active part in it, she could not be considered a principal, or even an accomplice, of the first class. As an accomplice of the second class, she was sentenced to eight years' imprisonment in a house of correction.

There remained the two daughters and Anna Wagner. None of them were parties to the conspiracy, or had ever assented to it, but all of them knew what was intended for many hours before it was effected; and all knew that the slightest hint to Kleinschrot would have been sufficient to prevent it. Anna Wagner seems to have been half tempted to give him one. She says in her confession that she could not help looking steadfastly at him during all the supper, which she knew, as everybody else at table knew, was to be his last meal — but she was silent. By the Bavarian law, a person who knows that a crime is intended, and does not employ the means of prevention which are in his power, *provided their employment expose neither himself, nor any third person for whom he is interested, to danger,* is an accessary of the third class, and punishable by imprisonment for from one to three years. The three prisoners claimed to be within each branch of the proviso. They said that if they had betrayed the plot, they would have incurred danger to themselves from Wagner's revenge; and would have exposed to danger in the one case a mother and two brothers, in the other a husband.

This was assented to, and the two daughters, against whom this was the only charge, were released. The judgement as to Kunigunda was, that she had not been proved

to be guilty. Margaret merely obtained her discharge for want of evidence. But Anna Wagner was further charged with having assisted in concealing the crime; she had washed away the stains of blood, and had prepared the sack in which the body was buried. It appeared also, that though she had disapproved of the murder before its perpetration, she had subsequently been most active in turning it to account, by extorting provisions, money, and services from the family. Against this, however, was to be set the merit of her confession, without which the second enquiry would have been as unproductive as the first had been, and Kleinschrot's disappearance would have remained an unexplained mystery. The result was, that she was sentenced, as an accessary of the third class, to one year's imprisonment.

There is much in these legal proceedings to excite and merit the disapprobation of an English reader. The doubt felt by the court, whether the murder of Kleinschrot was judicially proved, was puerile, and the distribution of punishment seems almost capricious. But if the Schwartz-muhle murder had occurred in England, would it have been dealt with in a more satisfactory manner? Without doubt, if an English tribunal had had the benefit of the full confessions which the Bavarian court obtained, it would not have taken ten months to come to a decision. It would have had no legal doubts whether Kleinschrot was or was not murdered. The mother, her two sons, and Wagner, would have been convicted of the murder, and the others of its concealment,

or, to use the technical term, its misprision. The former would have been sentenced to death, the latter to fine and imprisonment, and any mitigation of punishment must have proceeded from the Crown.

But would these confessions have been made under the English procedure? Certainly not. The accused would have been cautioned not to say anything to their own disadvantage; and the conduct of all, except Anna Wagner, shows that they would have acted on that caution. It is probable that Anna Wagner would have done so too. That she could not resist or elude the severe and skillful cross-examination of an *Untersuchungs richter*, does not prove that she would have volunteered to a passive English magistrate revelations dangerous to herself, and destructive to her husband and to the wealthy family which was under her control. But even if she had been ready to give her testimony, it could not have been received against her husband, and against the rest it amounted to little more than hearsay. She would have been stopped as soon as she began to repeat her husband's statements of the conferences with Konrad, in which the murder was planned; or the mode in which it was effected. 'Don't tell me, sir, what Giles told you.' Her evidence would have amounted to this. That 'in consequence of something that she heard,' she went early on the Sunday morning to the kitchen of the mill; found the floor and hearth covered with blood, and was directed to wash them; and that, in consequence of something that she afterwards heard, she prepared a sack; and although she would not have been

allowed to state as evidence what she knew only by hearsay, that the remains of Kleinschrot had been thrown into a ravine, she might have indicated the place where they were to be found. Their discovery — this evidence as to the state of the kitchen the morning after Kleinschrot's disappearance—the terms on which he was known to have lived with his family, and their avowed desire for his death — would have afforded strong grounds for suspecting that he had died unfairly, and that some of his household had effected his death, and that the others had a guilty knowledge of it. But they would not have enabled a jury to convict any individual as either principal or accessary.

We have heard, with pleasure, that this work is likely to be translated by a lady* who has already given the public proofs of her competency for the task. Having gone over the same field, we venture to offer two suggestions.

One is, that a selection from Feuerbach's narratives is likely to be more interesting to the English public than a translation of the whole. The whole consists of about thirteen hundred closely printed pages; and though it is diversified with great skill, yet the constant recurrence of crime, detection, and punishment — the often-repeated pictures of diseased imaginations, unrestrained desires, furious passions, or brutal insensibility, produce at length a fatiguing excitement. The reader is taken into a new

* Lady Duff Gordon.

world, in which all is grotesque and horrible. The strange figures by whom he is surrounded are influenced by feelings which never passed through his mind, and impelled by motives of which he scarcely knows the existence. His attention is roused by the novelty of the scene, and rewarded by the light thrown on the darkest portion of human nature. The secrets of the prison-house are opened to him. But at length he wishes to escape from its vaults, and to breathe the purer air of ordinary life. There are, indeed, students — and we ourselves are among the number —who regret that Feuerbach did not execute his purpose of adding to his work; but for the majority it is already too long.

And, secondly, we believe that even as to the narratives which may be selected, it would be advisable to use considerable liberty of retrenchment. Feuerbach has the true German love of detail, repetition, and disquisition. He tells a story in the words of one witness, he repeats it n those of a second and of a third, he re-states it as confessed by the prisoner, he recapitulates it in his own person, he goes over it again while examining the grounds of the verdict, and recurs to it when he considers the justice of the sentence. He traces up minute facts with a conscientiousness to which no error appears unimportant. All this gives a reality which would be wanting if the superfluous parts were omitted; but it gives that reality at the expense of a prolixity which is probably agreeable to the patient Professors of Giessen and Heidelberg, but would be intolerable in London or Paris. We are not

without some fear that we may have wearied our readers by our detailed relation of the Thomashof and Schwartzmuhle tragedies; and yet we have compressed into sixty pages what fills, in the original, one hundred and sixty.

Again, many of Feuerbach's general disquisitions—such as those on the nature of evidence, on the kinds and degrees of mental disease and of mental weakness, which render a criminal judicially irresponsible, and on the influence of passion—are of high philosophical merit. They are profound, and in many parts original; and his demonstrations, to use a technical word, of the characters which he dissects for the reader's instruction, show a knowledge of the morbid anatomy of the human mind almost approaching that of Shakspeare.

But here, again, the national indifference to conciseness shows itself. When he is proving or illustrating a general principle, he leaves no link to be supplied by the reader. When he is describing an individual, he omits no portion of his character. When, at the conclusion of a trial, he reviews the *dramatis personæ*, he elaborates the moral and intellectual portrait of an ordinary ruffian with as much delicacy and force as if he were painting a Cataline or a Borgia. He ascertains the immediate and remote causes which produced the state of mind in which a half-witted idiot killed her mistress, as if he were accounting for the assassination of Cæsar by Brutus, or the execution of Charles by Cromwell. The remedies, of course, are excision and condensation, and in some cases, as incidental to these, rearrangement. As we know that the proposed

translator, if she apply them at all, will apply them skillfully, we hope that she will apply them boldly. We trust that she will incur the labour and responsibility of retouching the work of a great artist, since it is the only means of enabling him to please and to instruct a new and dissimilar public.

JOCHIM HINRICH RAMCKE.

THE following story is extracted from the seventh volume of the 'Neue Pitaval,' a collection of trials compiled by Dr. Hitzig and Dr. Häring, published in Leipsic in 1845, and from the 'Actenmässige Darstellung des wider Jochim Hinrich Ramcke, Anna Maria Ramcke, und Hinrich Ladiges, wegen Mordes und Brand-stiftung geführten Criminal Processes. Von G. J. Graba. Kiel, 1844, pp. 515. 'A Report from Official Documents of the Trial of J. H. Ramcke, Anna M. Ramcke, and H. Ladiges, for Murder and Arson.' By G. J. Graba. Kiel, 1844.

These works form a small portion of a whole literature devoted to the trial of Ramcke — a trial which disturbed all Denmark and Northern Germany from 1837 down to the end of 1844.

We must preface it by a *dramatis personæ*. Jochim Ladiges, possessor of a farm near the village of Halstenbeck, in Holstein, died in 1834, leaving two children by his first marriage, and a second wife, Margaretta, aged thirty-one, pregnant of a daughter, who was born a few

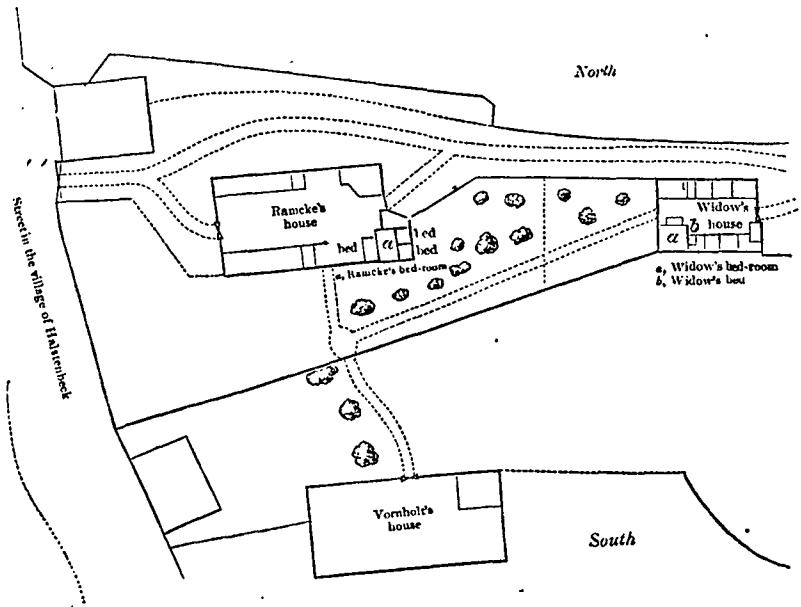
months after. His son, Hinrich Ladiges, was weak in mind, and deformed. His daughter, Anna Maria, married, in 1836, Jochim Hinrich Ramcke, born in 1811, and therefore then twenty-five years old. The Ramckes took possession of the farm, subject to heavy charges in favour of the widow, and other children of Ladiges; and also to a large annual sum, called 'abschied' or jointure, payable to the widow, and secured to her either by the will of her husband, or by her marriage settlement — it does not appear which.

The Ramckes lived, with Hinrich Ladiges and three servants, in the principal farm-house; the widow, who had married again, and her child, inhabited a smaller farm-house, about one hundred yards distant, but within the farm-yard. In Holstein the farm-houses consist of a large building, containing, under one roof, both the dwelling, and what with us are out-offices. The hall, which often occupies two-thirds of the whole, is both barn and cart-house. It has frequently three entrances, and seldom less than two. At one end are the dwelling-rooms, the kitchen and parlour on one side, the bed-rooms on the other. The bedsteads being often a sort of cupboards in recesses, one bed-room may be common to two or three bedsteads.

The dwelling rooms generally have windows looking outwards, and one looking inwards into the hall. The widow's house was thatched, fifty feet long and thirty-six broad.

To the south was a farm-house occupied by the Vorn-

holdt family. The relative position of the three houses and the general disposition of the interior will appear from the accompanying plan. The widow occupied only



PLAN

the southern portion of her house. The northern was tenanted by a carpenter named Luth, and his family.

At two o'clock in the morning of the 14th of June, 1837, the villagers were roused by seeing the widow's house in flames. On running to give assistance, they found in Vornholdt's hall, the widow in her night clothes, bleeding from several wounds, one of which in the throat rendered her speechless, and holding the wounded body of

her child in her arms. The fire was extinguished, and the money in the house was found undisturbed. On that night both the widow's husband and Luth, the lodger, were from home.

As soon as the wound in the throat was so far healed that she could speak, the widow's deposition was taken. She remembered having gone to bed with her child, an infant about a year and a half old, at about eleven o'clock on the night of the 13th. She believed that she had left open the door of the cupboard in which her bed lay, as she felt a presentiment of evil, and wished to be able to call for assistance.

She had slept about an hour, when she was roused by a noise in the bed-room, and put out her head. She then must have received the first blow, and have been rendered for a time unconscious, for the next thing that she recollected was that she was awakened by the groaning of the child, which lay low in the bed. She pulled it up, and found it and herself covered with blood. At the same instant she saw, through the window opening into the hall that the house was on fire. The door of her bed-room was open, and so was the outer door of the hall, both of which she believed that she had locked the night before. She ran out through the open hall door, first to the Ramckes' house, and knocked at their window, intending to beg them to save her cows. Ramcke and his wife came out to her. The woman cried to her husband, 'Jochim, Jochim, do her no harm.' She was frightened, ran on to Vornholdt's house,

fainted at the door, and remembered nothing more. By this time the child was dead.

The wife of Luth, the lodger, deposed that she was awakened by the smell and noise of fire. That her bedroom door was fastened from without, and that a cloth had been hung over the window looking into the hall. That she escaped with her children through the window looking into the yard, through smoke coming from the roof. That she ran round to the hall door, found it open, and the hall on fire; the widow had by this time escaped.

The surgeon found on the widow nine wounds inflicted by some sharp and heavy instrument, probably a hatchet, most of them about the face and breast. The nose was cut through in two places; the windpipe was also cut through, so that at first she breathed through the wound, and the thumb and forefinger of her left hand were deeply cut. It appeared that the wounds on the body and the face must have been given as she lay on her back, and those on the hand as she raised it to protect herself. On the body of the child were found five wounds, most of them mortal. It was almost bloodless.

Ramcke, his wife, and her brother Ladiges, were arrested. It was obvious that murder, not theft, had been the motive to the crime. They were the only persons who had an interest in getting rid of the widow and of her child, and their interest was great. But as the evidence against them was only circumstantial, they could not be convicted unless they could be brought to confess.

They began by denying all knowledge. The first to yield to solitary imprisonment, bread and water, and cross-examination, was Hinrich Ladiges. On the 2nd of October 1837, after having persisted for nearly four months in protesting his ignorance, he declared his intention to make a full confession. He related Ramcke's habitual complaints as to the claims of the Ladiges family on the estate, his irritation at having to pay so much to Hinrich, who worked little, and to the widow, who did nothing; his hatred of both of them; his threats to destroy them, and the constant state of terror in which they lived.

He then told that on the 13th of June, as they were going to bed, Ramcke said that, as Luth and the widow's husband were both absent, he had resolved to execute the murder that night. That Ladiges must go with him and watch, and should be paid fifty marks. That he consented to accompany Ramcke to the house, but not to enter it. That after this conversation they all went to bed, and he fell asleep. That he was awakened by Ramcke and his wife; that they all three went out, the husband armed with a hatchet, the wife taking a lighted turf on a plate. That when they reached the widow's house, the wife thrust the lighted turf into the thatch, and Ramcke broke into the house by its smaller door. That about a quarter of an hour after he (Ladiges) returned home, and was almost immediately followed by Ramcke and his wife, and that they went again to bed, without speaking a word.

That a short time after he heard a knocking at the window; that they all got out of bed, and found the widow standing at the door, holding her dying child. He denied that he was influenced by the promise of fifty marks. His only motive, he said, for accompanying Ramcke was fear. Ramcke always treated him as a slave; he never thought of resistance, and it did not occur to him that standing to watch was a crime. The same fear had prevented his making an earlier confession. Ramcke threatened to wring his neck if he uttered a word. To this confession Ladiges steadfastly adhered during the many examinations to which he was subjected during the four years that the enquiry lasted.

Anna Ramcke was pregnant at the beginning of her imprisonment. In October she was delivered of a dead child, which is said to have borne marks resembling the wounds inflicted on the widow's child.

On the 18th of December 1837 she was examined, but all that could be got from her was a protestation of her innocence, and that as to what her husband might have done she knew nothing. To cross-examination she opposed silence, and was punished by three days' solitary confinement on bread and water, and the threat of a subterraneous dungeon.

On the 22nd of December 1837 she was confronted with her husband and her brother; declared her brother's story to be false, and refused to alter her evidence. For this she was sentenced to three days more of bread and

water, and threatened with further and severe punishment if, at any future hearing, she were silent, or deviated in the slightest degree from truth. On the 8th of July 1838, in the thirteenth month of her imprisonment, she sent word that she was ready to confess.

The following is the substance of her confession:—'When we were going to bed, my husband told me that he intended to kill the widow that night, that I must go with him to fire the house, and my brother to watch. I begged him in vain not to do it. I knew that my husband cared for nothing but money. I knew that he would be as ready to take my life as that of my stepmother, and in my terror (*aengstigkeit*) I did all that he wished. I took with me a burning turf, and he a hatchet. He broke into the house through the smaller door, I put the turf under the thatch; my heart beat, and I thought on God, but my terror (*aengstigkeit*) forced me to do it. I went home as soon as the fire blazed, and found my brother already in bed. I went to bed, and my husband followed me. Soon after we heard knocking; we all got up and ran to the door, where we found my stepmother. My husband moved towards her so fiercely that I cried out, "Jochim, Jochim, do her no harm." She turned, and ran to Vornholdt's house. That is the truth; and may God forgive what I did in my aengstigkeit. My husband did not tell me that he intended to kill my little sister. I thought of her while I was putting the turf into the thatch, but then I thought on God. The next day, when my husband heard that the child was dead, he was de-

lighted, and said that there were fifty dollars saved, and that he trusted that the widow would not recover. He was constantly repeating that it would be no sin to kill her. I saw that he would do it, and I comforted myself when I found that he did not feel any alarm, or think it a sin.'

How often she was subsequently examined does not appear. Three examinations, one in January 1839, another in February 1839, and another in December 1839, in the third year of her imprisonment, are mentioned. In the first she repeated her confession, in the second she retracted it as to her having accompanied her husband. 'The gentlemen,' she said (Die Herren), 'had so bullied her, and her prison was so terrible, that she thought that her only resource was to say all that her brother had said. They might punish her for her false confession, and she must bear it: but she was innocent.'

It was remarked that after this retractation she ceased to take the Sacrament. But towards the end of December 1839 she repeated her first confession, and never afterwards varied it. Several years after, Dr. Graba visited her in the prison to which she was ultimately condemned. At first she was silent.

'I used,' he says, 'tactics by which I have often led prisoners to confess. I began by affecting to consider her guilt as a matter still doubtful. I asked if she knew what had become of her brother.' 'No,' she said—'in this place nothing is known.' I told her that he had suffered his

imprisonment and was free, and I asked her if she thought that he had deserved his sentence; she answered 'Yes.' 'Was every part of his confession true?' 'All, except that he accused me of having plotted the murder with my husband. I knew nothing of it until Jochim ordered me to get up and accompany him.' 'Have you any complaint to make of the court?' 'Yes; they sent a gipsy, one Albrecht, into my cell, with her devilish cards. After she had been with me two days, she took out her cards, and shuffled them some time, and then said, "Look there—those cards tell plainly that you *did* set fire to the house." I thought that, if Albrecht could find it out, other people would do so, and that my denial would do no good. But it was unfair, and a great shame, to set Albrecht on me with her devil's tricks.' 'But what Albrecht said was true?' 'Yes.' 'Tell me the story again.' She repeated the story, just as it appears in her two confessions.

'I observed that while I addressed her as "sie," she was constrained. It was only by the use of the familiar "du" that I obtained her confidence.'

We now come to Ramcke himself. For more than a year he denied his guilt. His feather bed, the delight of a German boor, was taken from under him. He was confined alone in an underground dungeon; he was loaded with heavy chains; he was fed with bread and water; the corpse of his child, covered with marks resembling the wounds on the murdered child, was suddenly shown to him; he was confronted with his wife and with his

brother-in-law; but for fifteen months no confession was extorted.

At last, on the 23rd of November 1838, he asked for a hearing from the Landrost of Pinneberg, fell on his knees, and exclaimed, 'I will make a full confession. I did it; I could not help doing it. The jointure was too great. All the people in Halstenbeck laughed at us. We had to work like slaves, only to make her comfortable. I could not help killing her; if not then, I should have done it another time. I thought of nothing else. The jointure was too great, and everybody laughed at me. I intended to strangle her, but could not manage it; so I took the hatchet, and struck at her in the dark. I was not thinking of the child, till it screamed, and I then got into a fury, and struck at mother and child in the dark till the screaming ceased, and I thought that they were both dead. I know that I have sinned, but I could not help it. All the Halstenbeckers were on her side, and laughed at me. She kept me at work like a slave, and enjoyed herself. If she had had a reasonable jointure, I should never have thought of killing her, but it was too great. What else could I do?

'I thought of it all last winter. I used in the evening to go round her house and look in at her window. The night before I did it, I looked into her window, and felt that I must do it. My heart beat this morning till I was forced to confess. It was God's will that I should do it, and I hope that He will forgive me, and punish those who drove me to do it.'

In recompense for his confession the heavy chains were taken off. 'This,' says Graba, 'has been complained of. But does not every judge say to the prisoner whom he is examining, "You had far better tell the truth. You will be much better treated if you do so." And is there any difference between saying this and doing it? Does any judge pretend that he treats a prisoner who confesses, and a contumacious prisoner, in the same way?'*.

Two days after he retracted his confession. He had made it, he said, because he was told that they had machines with which men who would not confess were torn asunder.

For this retractation he was sentenced to three days' bread and water.

On the 4th of December 1838 he asked to be examined, again persisted in declaring his innocence, and was punished with five days' bread and water.

After this had occurred two or three times, he sent for the Landrost's secretary, and requested to be reexamined. He was so, on the 12th of January 1839. He now repeated, with more details, his former confession. He said that, both on the Sunday and on the Monday before the murder, he had resolved to do it that night, but that each night he had overslept himself.

'I cannot tell,' he said, 'why I set fire to the house, except that God ordered me (Unser Herrgott mir das so angegeben) — God ordained that I should come to Hal-

* Darstellung, p. 67.

stenbeck. I am a thoroughly kind man (ein ganz guter mench) — perhaps hot, but it soon goes off, and I am kind again. I did it in a heat. I did not intend to do it with the hatchet, but with a cord. God willed that I should kill the mother and child with the hatchet; it was a much greater wickedness; the cord would have given her less pain.'

On the 7th of February 1839 he was again examined, and reasserted his innocence, though informed that his wife and brother-in-law had corroborated his confession. He maintained that he had been driven to a false confession by the horrors of his dungeon, that his bread seemed to him to be poisoned, that a corpse was by his side, and that it was the grossest injustice and cruelty to detain him, since the judge had promised to release him if he would confess. 'His excellency,' he said, 'said to me that if I would not confess, I might be kept here till I grew black.'

'This,' says Dr. Graba, 'is a threat often used, and it is obviously true that a criminal shortens his imprisonment by an early confession, and prolongs it by denials.'

'If I deserve punishment,' continued Ramcke, 'take me to the house of correction (Zuchthaus); keep me there two years, three years, as long as you like; only take me out of this place, and do what you will with me.'

In 1840 the preliminary enquiry which had commenced in June 1837 was ended. The documentary evidence, filling 1,050 closely written folio pages, was communicated to the counsel for the prosecution and defence.

The prosecutor, Dr. Jessen, relied on the confessions, and demanded the condemnation of all three to death — Ramcke on the wheel, the two others by the sword.

The three counsel for the defence took different courses.

The counsel for Ladiges admitted the truth of his confession, and pleaded merely his mental and bodily weakness, and his inability to resist the orders of Ramcke.

The counsel for Anna Ramcke opposed the confession of Ramcke, who completely exculpated her, to that of Ladiges, which accused her of having fired the thatch, and endeavoured to destroy the force of her own confession by ascribing it to the horrors of her prison, and to her belief that her only prospect of escape from it was to make her own confession agree with that of her brother.

Ramcke's counsel ascribed the evidence given against him by his wife and by his brother-in-law to hatred and fear, and to a wish to escape themselves by throwing the murder on him. His own confession the counsel treated as extorted from him by the torture of a dark subterraneous dungeon, only nine feet by six, in which he was chained to his bed of boards, and loaded with heavy handcuffs, fed with bread and water, and threatened to be kept until he was black in the face, or confessed.

'Such a confinement,' he said, 'inflicted for seventeen months on a man accustomed to hard work in the open air, was enough to wring out any confession whatever.'

The *Untersuchung*, or preliminary enquiry, had lasted,

as we have seen, for two years and three-quarters. The special inquisition or trial lasted for fifteen months longer. On the 26th or 27th of July 1841 the Criminal Court of Pinneberg, the lordship in which Halstenbeck is situated, was assembled to hear the accusation and defences read in the presence of the accused. The reading lasted for two days. Ladiges listened in silence, apparently understanding nothing that he heard. Anna Ramcke also listened in silence, but in tears, and sobbed violently when she was accused of brutal cruelty.

Ramcke looked at first round the court with a careless gaze, as if he were an indifferent spectator. As the prosecutor developed the proofs of his guilt, he became at first attentive, and afterwards excited, and at last began to speak, but not during the first day loud enough to disturb the proceedings. The next day, his interruptions became more audible, and the Landrost was forced to threaten to have him removed. The threat succeeded, and he was quiet during the remainder of the sitting.

The record of the proceedings was now sent to the High Criminal Court at Gluckstadt for decision.

The Gluckstadt court found all the prisoners guilty, and sentenced Ramcke to be beheaded, his head exposed on a pole, and his body on a wheel; his wife to be simply beheaded; and Ladiges, in consideration of the five years' imprisonment which he had already suffered, to be imprisoned for only two years longer. On appeal to the Schleswick-Holstein Court of Appeal, the sentence of

Ramcke was altered, with the royal permission, to simply beheading, and that of his wife to imprisonment for life. The Pinneberg Landrost was ordered to publish this sentence on the 31st of May 1842, and to proceed to execution. Doubts, however, were suggested as to the sanity of Ramcke.

The Pinneberg Court ordered him to be examined by a Dr. Jessen, a physician. Jessen's opinion was that he was sane, though pretending to be mad; but it admitted the possibility, though not the probability, that he might be really mad.

It was decided that the sentence should be formally published, and Ramcke's behaviour, during its publication, watched; and that, unless he then showed signs of madness, it should be executed.

The High Court of Pinneberg was assembled in the Town Hall. Ramcke and his wife were brought in. The chains which Ramcke had worn for four years were taken off.

We translate, as well as we can, Dr. Graba's account of the ceremony; but it is so full of technical and obsolete expressions, that we do not rely on the accuracy of our translation. The principal actors seem to have been the Vorsprecher, or President; sixteen Gerichts-Männer, or Achts-Männer a sort of grand jury; and the Dingvoght, probably answering to our Mayor.

Vorsprecher.—'You selected and respectable men

(verordenete Achts-Männer), I ask you if it be now the day and hour when I may open the Criminal Court of His Royal Majesty of Denmark, our most gracious hereditary king and lord, for every man according to his right (einem jeden zu seinem rechte).'

The foreman of the Achts-Männer.—'Yes.'

Vorsprecher.—'Therefore, in the name of His Royal Majesty our most gracious hereditary king and lord, Christian VIII., and by his royal might and power, I open a public criminal court. I command what is right, and forbid what is wrong. I forbid disorder, and command peace — the peace of our most gracious hereditary king. I require every thing that ought to be required, whether I mention it or do not mention it. With once and twice, with verdict and right (mit urtheil und recht), I ask you whether I have sufficiently opened this royal criminal court.'

Answer.—'Yes, it is so.'

Vorsprecher.—'Listen, you selected, honourable men: the court is opened for everyone according to his right. It is opened for the first time, for the second time, for the third time — twice and once, with verdict and right. Let no one come before it without permission and right. I ask you whether the persons on trial, Jochim Hinrich Ramcke, and his wife Anna Maria Ramcke, both now present, guilty of murder and arson, ought to undergo the lawful punishment of their crimes—I ask you to bring in a verdict.'

The Acht-Männer retired for an instant with the Dingvoght, and immediately returned into court, and

the Dingvoght pronounced their verdict. After reciting at considerable length their crimes, it condemned Ramcke to die on the wheel (mit dem Rade zum Todt zu bringen), his wife to be beheaded.

The Landrost then rose and declared the royal commutation of punishment, and broke the wand over Ramcke (brach den Stab über Ramcke). Breaking the wand is putting on the black cap—the visible sign of a capital sentence.

Anna Ramcke was immediately taken to the carriage which was to convey her to the Zuchthaus, in which she was to pass the remainder of her life. She was asked if she wished to take leave of her husband; but shook her head. Again, as she entered the Zuchthaus, she was asked if she had any message for him. 'Let him go to the devil,' she answered.

Ramcke was taken back to prison to await the decision of Dr. Jessen as to his sanity.

The next day, the 31st of August 1842, Dr. Jessen made the following report:—

'Yesterday Ramcke allowed himself to be dressed, and taken to the Town Hall, without showing the slightest excitement or alarm. His whole demeanour, while the sentence was being read, was that of a hardened malefactor. He looked round calmly and carelessly, and listened, without betraying, except once or twice, any interest in what was going on. He remained silent and quiet when he was taken back to his prison. He was visited there by two

clergymen, and appeared to them indifferent to his imminent death, and anxious only to put an end to their exhortations by irrelevant interruptions.

'At ten in the evening I visited him in company with Secretary Wennecker. We succeeded at length in making an impression on him. He burst into tears, still occasionally uttering unconnected exclamations. But his obduracy returned, and we left him as we found him.

'On the whole, I see no reason to modify my previous opinion, that he is pretending to be mad. That there may not lie under this simulation, and concealed by it, some partial aberration of mind, I will not absolutely deny. But my observation of him has not been able to detect any proofs of it.'

On this report it was decided to proceed to execution.

The scaffold was erected about two miles from Pinneberg. Thousands assembled round it, many of whom came from Hamburg and Altona. The execution was fixed for eleven o'clock, but it was nearly twelve before the cart carrying Ramcke, pale as death, two clergymen, and a warder, left the prison. The procession made its way slowly and with difficulty through the crowd. The Landrost was in his carriage, near the scaffold. Suddenly a royal courier rode rapidly through the deserted high street of Pinneberg, and thence along the Rellingen road towards the scaffold, reached the scaffold while the cart was still at some distance, and handed a paper to the Landrost. The Landrost broke the seal, and immediately ordered the

cart to return to the prison. He then went slowly towards the scaffold, mounted it, and, after some delay, read to the crowd a royal respite.

Before he had finished reading, Ramcke was again in his prison. Dr. Graba believes that if the respite had been known while Ramcke was still in the crowd, he would have been torn to pieces. As it was, the block, and the coffin which lay near it, were in an instant broken into bits. Ramcke had shown no emotion on his way to the scaffold. On his return he sat, apparently asleep.

We must now explain the respite. In Ratzeburg, in the neighbourhood of Pinneberg, lived one Peter von Kobbe, who had passed a varied life. He had been an officer of dragoons, a professor of law at Gottingen, a burgermaster in Munstorf, a reporter in the Hanoverian parliament, and a litterateur in Ratzeburg. In that capacity he had published pamphlets, some in defence of some remarkable criminals, others against the punishment of death, and others against trial by jury. The speeches on the trial of Ramcke had been printed, and had convinced him of Ramcke's innocence. He had heard also rumours of his insanity. The day before the publication of the sentence he wrote to the Landrost, and also to the King of Denmark, to implore a further enquiry. The application to the Landrost of course failed, and on the 30th of August, being at Halstenbeck, he found that his letter sent to the King by post would not reach him till after the time fixed for the execution.

He went to the little inn, and there, on the bad paper and with the bad ink of a German pot-house, wrote a second letter to the King, and sent it by an estafette.

It reached Heide, where the King was then staying, late on the night of the 30th of August, or rather early on the morning of the 31st, and was laid on the table of his cabinet. The King's habit was to go into his cabinet the last thing before he went to bed, but he seldom read his despatches till the next morning.

Kobbe's packet, on coarse grey paper, clumsily folded, attracted his attention. He opened it, read it, and finding that Kobbe was known as an author and a lawyer, ordered a respite to be made out and forwarded. The post-master at Heide had been struck by the late arrival of the estafette: he thought it possible that an immediate answer might be necessary, and he had stayed up, and kept a courier with his horse saddled. Had he not done this Ramcke must have been executed, for the courier carrying the respite did not reach Pinneberg till 12.30 o'clock on the morning of the 1st of September. The execution had been appointed for eleven, and certainly would have been over by 12.45. The last stage between Heide and Pinneberg generally takes two hours and a quarter. On this occasion it was traversed by the last courier in three-quarters of an hour. The horse on which he performed this feat went afterwards by the name of the Retter (Rescuer).

On the 4th of September, the King sent to the High Court of Criminal Justice an order to proceed to execution

unless, on further enquiry, the mental state of the prisoner should prove to be such as to render it improper.

The High Court thereupon ordered the Pinneberg court to enquire and report on the state of mind of the prisoner shortly before, during, and after the 1st of September.

The persons who had been about Ramcke on the 31st of August and the 1st of September were again examined.

One of the clergymen who had visited him in prison and had accompanied him to the scaffold deposed that Ramcke, when they were alone, said that he regretted what he had done, but soon after began to talk unconnectedly. That he was quiet on the road to execution, repressed all religious exhortation, but answered sensibly on other matters.

The warder who undressed him after his return deposed that his clothes were as wet with perspiration as if they had been dragged through a river. He found no alteration in him; his appetite was good, and his sleep sound.

A fellow-prisoner, Rehdenburg, who had been for some days before the 1st of September in the same cell with Ramcke, said that he spoke sensibly when they were alone, but that the instant anyone approached his talk became incoherent, and so rapid that it was scarcely intelligible. When his case was alluded to, he said merely that the Pinneberg people could do nothing to him, and complained of the clerks and the secretary. 'He could not conceive,' he said, 'how he came to confess. It was all the fault of the lawyers. There was no such

thing as a future life; all was over when you died.' Noise disturbed him, and rendered him incoherent; but in general he was sensible.

Dr. Jessen said that he had nothing to add to his former evidence, or to alter in his former opinion.

While this enquiry was going on, Kobbe published pamphlet after pamphlet, maintaining Ramcke's innocence, complaining of his treatment by the public prosecutor, and denouncing the judges as more prejudiced, more obstinate, and more unfair than even a jury could have been. The press, not only in Denmark, but in Germany, took up the question. It became the subject of a paper war.

The court, though convinced of the propriety of its first decision, shrunk from acting on its own responsibility. It requested the Faculty of Medicine of the University of Kiel to enquire into the state of Ramcke's mind.

The Faculty sent to Pinneberg a commission consisting of Professors Ritter and Langenbeck, and the Dean of the Faculty, Meyn. It was arranged that they should visit Ramcke separately on the 29th of December 1842, and the following days. This is the most important portion of Langenbeck's report of his interview :—

Question. 'Have you been here long?'

Answer. 'Yes; more than five years.'

Q. 'Yet you look well?'

A. 'But I am not the man that I was. I was the best labourer in Halstenbeck.'

Q. 'Why are you here?'

A. 'They wanted me to speak, and therefore arrested me.'

Q. 'For theft, or for smuggling?'

A. 'No. I was a first-rate workman, and had enough without stealing.'

Q. 'They told me, in the inn, that you were here for murder and arson?'

A. 'No. I am Roland, of Halstenbeck. All the ships on the Elbe belong to me.'

Here he looked down, blushed, and carried his left hand to the chain which was riveted on his right arm. I felt his pulse. It was weak and irregular.

Q. 'How long is it that you have not been right in your mind?'

A. 'I have always been right in my mind. I am the great coach-maker in Altona.'

He now talked incoherently for a quarter of an hour, and said, at last, that he was God, and knew everything.

Q. 'Then you must know who committed the murder in Halstenbeck?'

A. 'That is a subject on which I do not like to speak. What is past should be forgotten.'

Q. 'Your hand is bloody.'

He looked at it, and talked nonsense.

Q. 'Do you ever dream of the murdered child?'

A. 'I do not speak of such things.'

Q. 'Yesterday I saw the woman whom you tried to murder.'

A. 'So?' and he began to talk of having 100 horses.

Q. 'I saw the scars. The wounds must have been made with a hatchet.'

A. 'Are you one of the clerks?'

Q. 'I know that you and your wife fired the house.'

A. 'I have no wife.'

Q. 'Where were you when the house was burnt?'

No answer.

Q. 'The jointure was heavy?'

A. 'No. I paid it readily.'

Q. 'Then why did you commit that crime?'

A. 'I do not like to speak of such things.'

Q. 'If you are innocent, why did you confess?'

A. 'I do not like to speak of such things. No one ought to talk about the Halstenbeck story.'

The next day all three went to the prison, but Meyn entered Ramcke's cell alone.

Q. 'Is your mother alive?'

A. 'I have not seen her since I have been here. I have been here for five years.'

Q. 'Do you recollect the last time that you went through Rellingen (the road to the scaffold)?'

A. 'Yes.'

Q. 'Who was with you?'

A. 'Many persons.'

Q. 'Who sat in the cart with you?'

A. 'I do not like to talk of such things.'

Here the other two commissioners entered.

Q. 'Why were you taken through Rellingen?'

A. 'To take a drive.'

Q. 'Did you meet many persons?'

A. 'Many.'

Q. 'Did you ever live in Halstenbeck?'

A. 'Yes. Half a year.'

Q. 'Whence did you come to this place?'

A. 'From Halstenbeck. They wanted to talk to me.'

Q. 'About what?'

He talked nonsense.

Q. 'Were not you accused of having killed a child?'

A. 'No.'

He again talked nonsense.

Q. 'Did you not wound a woman in Halstenbeck with a hatchet?'

A. 'I do not like to talk of such things.'

The widow was now suddenly brought before him. He went towards her, but his countenance did not change.

Q. 'Do you know that woman?'

At first he said, 'No.' Afterwards, 'that she was Mariken Ladiges, of Halstenbeck.'

Q. 'How do you know that?'

A. 'You told me so;' (which was not true). His pulse was felt, and was quicker and fuller. Her scars were shown to him, and he asked whether her forefinger was stiff.

When she said she had forgiven him, he said, 'Yes, good woman, you must maintain yourself as well as you can—you can still spin. I will give you hemp and flax —your house can be repaired—my masons shall help.'

Q. 'How came you to know that woman?'

A. 'I do not like to talk on that matter.'

Q. 'You know the Halstenbeck story?'

A. 'I know all about it.'

Q. 'Did you pay to her her jointure?'

A. 'I do not like to talk about it.'

Q. 'Was it too heavy?'

A. 'No.'

Here the interview of that day ended.

The next interview was on the 30th of December, 1842. Ramcke began by incoherent babble (Geschwätz), but became quiet when reproved.

Q. 'Do you know why we are here?'

A. 'A visit from you does me honour.'

Q. 'Do you remember having had a companion in your cell?'

A. 'My memory has become weak.'

Q. 'Was not Kehdenburg with you for some time?'

A. 'I know nothing of Kehdenburg; but I know that I have long worn keden' (fetters).

He was then asked to describe his cell, which he did accurately, and added, 'This is a much better room. I am delighted to have the honour of a visit from you. Your sitting and writing here does me no harm.'

Q. 'Have you anything to complain of?'

A. 'I should like the fetters to be taken from my hands and feet.'

On this occasion the commissioners wrote a description of his person, which we extract:—

'Ramcke is short. His stooping figure, his unsteady gait, and his exceeding thinness, the results of his long imprisonment, have obliterated all traces of his former strength. His health, however, appears to be unaltered. His appetite is good; his voice is strong; his pulse weak, but regular. The expression of his eyes is generally calm and cheerful, though at times anxious, suspicious, and malignant. His mouth is small, the lips compressed. He opens them little, and speaks through his teeth. He is very clean, and apparently careful of his person.'

The faculty of medicine of Kiel made their final report on the 29th of March, 1843. 'We find,' they said, 'no proofs that the agitating (erschüttende) events of Ramcke's previous life have permanently affected him. We find in his conduct and in his conversation unmistakable signs that he is simulating madness. But we cannot altogether dismiss the doubt whether this simulation, persevered in during four years and a half, may not have produced a diseased state of his feelings and conceptions (eine krankhafte Richtung seiner Gefühle und Vorstellungen).'

The High Court of Appeal held, unanimously, that the report from the University of Kiel justified the execution of the sentence, and ordered it to take place.

Dr. Graba believes that the majority of the public approved the conduct of the Court. But there was, as there always is in such cases, a minority—some opposed to the punishment of death, in any case whatever, and others unable to decide, not, indeed, between conflicting probabilities, but between the strongest probability on one

side, and a possibility on the other — who clamoured against the execution of a criminal, however detestable, whose sanity had been questioned.

The minority, as usual, prevailed. The King, by a rescript dated the 13th of July, 1843, in the seventh year of the imprisonment, and what must be called the trial of Ramcke, declared, that although it appeared, from the report of the University of Kiel, that the madness of Ramcke was feigned, and although there was no obstacle to his execution (kein Hinderniss der Vollstreckung der Todesstrafe entgegen stehe), yet, out of peculiar grace, His Majesty felt moved (aus besonderer allerhöchster Gnade S. K. M. sich bewogen gefunden habe) to commute the sentence of death for that of imprisonment for life.

A few weeks afterwards, the King visited him in his prison, and addressed a few words to him. Ramcke's only answer was, 'We are all men;' but he then showed no sign of insanity.

Some time afterwards (he does not give the date), Dr. Graba visited the prison. This is his story:—

'The door of Ramcke's cell was open. He was talking unintelligibly. I asked him if he was speaking to me? He talked again incoherently. "Is he sane?" I asked an officer of the prison. "Yes," said Ramcke, "I am quite sane." "It is Ramcke," said the officer. "No," he replied, "I am Peter Heinsohn."

Q. '"Are you Ramcke, or not?" I asked.

A. '"Yes, I am."

'He then looked down. His eyes caught some brown

marks in his wrists. He held up his hands, and said, "Here are the marks come out again; they come from the fetters."

Q. "What fetters?"

A. "The fetters that I wore in Pinneberg."

Q. "For what reason?"

A. "Yes, the marks are coming out again."

Q. "Do they sometimes go?"

A. "Yes, they come and go."

Q. "Are you well off here?"

A. "No."

Q. "Do you wish to return to Pinneberg?"

A. "No. I had rather stay here."

Q. "Why?"

Irrational babble.

Q. "They say that you were once a strong fellow?"

A. "Yes. I could lift two anvils. I was a smith."

Q. "Had you land?"

A. "No."

Q. "I am told that you could plough as much as two other men?"

A. "So I could."

Q. "Yet you say that you had no land?"

A. "I had none."

Q. "Is it not time to sow the oats?"

A. "Yes."

Q. "You would like to sow yours?"

A. "Yes."

Q. "Had you good oat land in Halstenbeck?"

A. '"Excellent."

'Then followed irrational babble.

'He kept at his task, pulling wool, all the time very diligently and very unskilfully.

'His companions said that this was a specimen of his constant demeanour. I did not perceive in his eyes the occasionally malignant, suspicious expression attributed to them by the commissioner, or the suppliant, martyr-like expression given to them by Kobbe. They are clear and cheerful. His constant smile, without apparent motive, did not seem to me to be artificial. It is almost impossible to affect such a smile. I have never seen it except among children and the insane. He is no longer thin, but his flesh is soft and pale, like that of all long-detained prisoners.

'Dr. Bohsen, the physician of the Zuchthause, and the celebrated Dr. Kuppell, the founder of the Schleswick madhouse, agree with me in believing that Ramcke is now decidedly insane.

'My own belief is, that he was so at the time of the publication of his sentence, though I do not wonder that the courts of law and the medical men attributed to an affectation of insanity the conduct which appears to me to have been a symptom of real insanity.'

The last person who mentions him, Dr. Häring, writing in 1845, describes him then as permanently insane.

In ordinary life, the educated endure inaction worse than the ignorant. A coachman sits for hours on his box,

even on a bad night, without feeling *ennui*. If his master had to sit quiet all that time in the inside of his comfortable carriage, he would tear his hair from impatience. But when supported by the consciousness that he is suffering for a good cause, a man of education and of intellectual resources can bear an imprisonment much longer than that of Ramcke without permanent injury. Such was the case with General Zucchi, whom we saw in Rome after he had been released by the Hungarian insurrection from an imprisonment of seventeen years in an Austrian dungeon. He told us that he had not been unhappy.

Such too was the case of the prisoners of Spielberg.

But to an ignorant peasant, whose only employment had been bodily work, whose only purposes had been to get money and to save it, seventeen months passed in examinations or in punishment, in chains, in a dark cell, nine feet by six; seventeen months of anxiety and torture, must have been more than such a mind could sustain.

Dr. Graba fixes the epoch of the commencement of Ramcke's insanity immediately after his first confession. That confession itself appears to us to be the production of insanity—not of an insanity which could safely be admitted as an excuse — not of an insanity which prevented its subject from knowing the effects of what he was doing and saying; but of an insanity which had disordered his moral feelings, his moral perceptions, and his powers of reasoning. He thought that the murder was ordained by God. He

thought, a usual symptom of insanity, that all his Halstenbeck neighbours were laughing at his troubles. He thought that, sooner or later, the thing must be done. He seems scarcely to have felt any remorse or regret, except at its detection. The first night on which he had decided to do it he overslept himself; and so again the second. The day after the murder he was delighted to hear that the child was dead, and hoped that the mother would not recover. While his wife was setting fire to the roof he was fastening from without the door of the bedroom of the Luth family, so that the chances were that they would have been burned to death. And this appears to have been his first fault. He was not inured to crime by degrees. His conduct until that night appears to have been irreproachable. His very first step from innocence was into the deepest abyss of wickedness.

What now would have been the result if the crime had been committed in England? Anna Ramcke must have been acquitted, as acting under the compulsion of her husband. But if Ladiges had thought fit to turn approver against Ramcke, no puerilities as to the evidence of an accomplice being only a half proof would have interfered. Ramcke would have been indicted at the next assizes; the trial would have lasted a day, or at most two days; the jury without ten minutes' deliberation would have convicted him; even an English public would not have petitioned in his favour; even an English Home office

would not have attended to such a petition; and he would have been hanged before a German Untersuchungsrichter had reached the third or fourth of his six hundred examinations.

But if Ladiges had been silent, which is probable, for he was so for four months, even in Holstein, even when subjected to the moral and physical torture of bread and water, solitary imprisonment and cross-examination, the result would have been what it has been in the case of the Road murder. It would have been clear that one of the three suspected persons was guilty, but not which one. They would not have been even tried, since if tried they must have been acquitted. It would have remained an unexplained mystery. The German procedure dispelled all mystery. It shed the brightest light on every detail of this dark wickedness. It obtained the punishment of all the offenders: but it did this by driving the strong prisoner mad, and by inflicting on the two weak ones sufferings, which, even when they were proved to have incurred guilt, seemed almost greater than that guilt; and which, if they had been shown (as in the horrible case of Rosalie Doise) to be innocent, must have overwhelmed the court with shame and remorse.

The procedure which we have been describing seems to exist throughout Germany. We have found it in Holstein, in the extreme north; and in Bavaria, in the far south. Rosalie Doise's case shows that it prevails in France.

We doubt whether any part of the continent, except Turkey, be free from it; and Turkey, like England, probably owes her immunity to her having escaped the Roman law.

It is an attempt to cure a childish law of evidence by a brutal law of procedure.

CHARLES THE FIFTH.*

[Edinburgh Review, January 1855.]

THE influence of individuals on the destinies of the world is generally small. The great majority even of the rulers of mankind merely co-operate in a movement which would have pursued its pre-appointed track as rapidly and as completely if they had never existed. Their work may be well done; but, if they were not there, it would be done just as well by some one else. A few eminent men, whose talents and energy have been aided by fortune, have been able perceptibly to accelerate or perceptibly to retard, the progress of events. Hannibal was among the greatest statesmen, and was perhaps the greatest general, that the world has seen. All that his

* The Cloister Life of the Emperor Charles the Fifth. By William Stirling, 3rd edition. London, 1853. 8vo. Charles Quint. Par Amedie Pichot. Paris, 1854. 8vo. Charles-Quint. Son Abdication, son Séjour, et sa Mort au Monastère de Yuste. Par M. Mignet. Paris, 1854. 8vo. Retraite et Mort de Charles-Quint au Monastère de Yuste. Lettres inédites d'aprez les originaux conservés dans les Archives Royales de Samancas. Par M. Gachard. Tome 1er. Bruxelles, Gand, et Leipsig, 1854.

talents and his energy wielding the whole power of Carthage could do was to delay her fall for a few years. If Rome had not had Hannibal for an opponent she would have subdued Carthage a little sooner: if she had not had Cæsar for a leader she would have subdued Gaul a little later. If Cæsar had endeavoured to support her republican institutions, they might have lasted until his death. The fall of Carthage, of Gaul, and of the Roman republic were questions merely of time.

But circumstances from time to time occur when the balance between two great events, or between two great systems of events, is so equally poised that the impulse given by a single hand may be decisive. If Lycurgus had died in infancy, the whole history of Greece might have been altered, and a change in the fortunes of Greece might have been a change in the fortunes of the world. The Athenian domination might have extended over Sicily and Magna Græcia, Rome might have been stifled in her early adolescence, and who can say what would now be the state of Europe if she had not undergone the Roman domination or received the Roman law? If the Barbarian invasion had found her a Greek or a Carthaginian empire?

The beginning of the sixteenth century was one of these critical periods. Great forces, material and mental, were then opposed. The events which were to be the result of their conflict have not yet exhausted their influence: they may affect the human race for many centuries to come. And these forces were so nicely balanced that the prepon-

derance of religion or of superstition, of free enquiry or of unreasoning conformity, of France or of Germany, depended on the conduct of Charles V. and of Luther.

There seem to be no grounds for supposing that, if Luther had died, in 1506, a novice in the Augustinian convent of Erfurth, the Reformation, such as it now is, would have taken place. At first sight, indeed, it may appear, that the corruptions which he attacked were too gross and palpable to endure the improved intelligence of modern Europe. But we must recollect that on his death Protestantism ceased to extend itself. Its limits are now nearly such as he left them. What was Popish in 1546 remains Popish now. Nor is this to be ascribed to inferiority of political institutions or of cultivation. The democratic cantons of Switzerland, and the well-governed, industrious Flemings, are as strenuous in their adherence to Roman Catholicism as the despotically ruled Danes were in their rejection of it.

The most highly civilised portions of the Continent are France, Italy, the Low Countries, and Germany. Not one-fourth of their inhabitants are Protestants. If the inherent vices of Popery have not destroyed it in France; if it has withstood there the learning and wisdom of the seventeenth century, the wit and license of the eighteenth, and the boldness and philosophy of the nineteenth, what right have we to assume that those vices would have been fatal to it in Great Britain?

Nor can the permanence of Roman Catholicism be accounted for by its self-reformation. Without doubt,

with the improved decorousness of modern times, some of its grossest practical abuses have been removed or palliated. Indulgencies are no longer on public sale. The morals in monasteries and convents, and those of the secular clergy, are decent: there is less of violent active persecution. But a church which claims to be infallible cannot really reform her doctrines. Every error that she has once adopted becomes stereotyped, every step by which she has diverged from truth is irretrievable. All the worst superstitions of the Romish Church are maintained by her at this instant as stoutly as they were when Luther first renounced her communion. The prohibition of enquiry, the reliance on legendary traditions, the idolatry of relics, the invocation of Saints, the adoration of the Virgin Mary, the merit ascribed to voluntary suffering, and to premeditated uselessness, 'the conversion of the Sacraments into charms, of public worship into a magic incantation muttered in a dead language, and of the duty of Christian Holiness into fantastic penances, pilgrimages, scapularies, and a whole train of superstitious observances worthy of paganism in its worst forms,'* are all in full vigour among many of the Teutonic races and among all the nations whose languages are derived from the Latin. The clergy of France, once the most intelligent defenders of the liberties of the Gallican Church, are now more ultramontane than the Italians.

We repeat our belief that if Luther had not been born, or if he had wanted any one of that wonderful assemblage

* Whately's 'Errors of Romanism,' Essay vi. sect. 3.

of moral and intellectual excellences that enabled him to triumph in the most difficult contest that ever was waged by man, if he had had less courage, less self-devotion, less diligence, less sagacity, less eloquence, less prudence, or less sincerity, the Pope would still be the Spiritual ruler of all Western Europe and America, and the peculiar doctrines of Romanism would prevail there, doubted indeed, or disbelieved, or unthought of, by the educated classes, and little understood by the uneducated, but conformed to by all.

On the other hand, if Charles V. had been able, like the Elector of Saxony and the Landgrave of Hesse, to shake off the prejudices of his early education — if, like them, he had listened to Luther with candour, and, like them, had been convinced, and, instead of striving to crush the Reformation, had put himself at its head, a train of consequences would have been set in motion not less momentous than those which would have followed the submission or the premature death of Luther.

The Reformation would have spread over the whole of Germany and of the Netherlands. The inhabitants of those vast countries were all eager to throw off the dominion of Rome, and were kept under her yoke only by the tyranny and persecution of Charles. Germany would have remained an empire. It required the enthusiasm of a religious cause to rouse her feudatories to rise against their sovereign, and to force on him a treaty which, in fact, admitted their independence. It was to the treaty of Passau, to the shock then given to the Imperial

sovereignty, that the Elector of Brandenburg, a hundred and fifty years after, owed his crown, and the Emperor, who had recognised one of his vassals as a king, lost all real authority over the others.

If the whole of Germany and the Low Countries had remained one united body, if the former had not been laid waste by the thirty years' war, and the latter by the war which produced the independence of the United Provinces, such an empire would have been the arbiter of the Continent. Flanders, Alsace, Lorraine, and Franche Compté would have remained German; France would not have been able twice to threaten the independence of Europe; a Bourbon would not now be reigning in Spain.

No country would have gained so much by such a change in the course of events as Spain. In the first place, she would have become Protestant. Few of the phenomena of that remarkable period are more striking than the weakness of the hold which peculiar religious opinions then possessed over the bulk of the people of Europe. Henry VIII., Edward VI., Mary, and Elizabeth, turned the English backwards and forwards, from Romanism to Protestantism, and from Protestantism to Romanism, at the will, we had almost said at the caprice, of the monarch for the time being. The pride of the Roman Catholics had not been roused by the rivalry of a new Church, with bishops, and revenues, and patronage, and power, and rank of its own. The Reformation appeared to them not the introduction of a hostile faith,

but a purification of the old one, and wherever it was not persecuted it was adopted.

Ireland may appear to be an exception; but the real sovereigns of the greater part of Ireland were then its native chieftains. Henry VIII. and his immediate successors were hostile pretenders. And it may be added that the Reformation was not preached to the Celtic Irish. They could not read Latin, and no reformer wrote or preached in Irish.

But if Spain had been Protestant, she would have escaped the Inquisition—the brutalising instrument which more than any other means of misgovernment, more than despotism, or insecurity, or lawlessness, or oppression, has degraded the Spanish mind. She would have escaped the religious wars which wasted her strength for more than sixty years. She would not have been governed by Jesuits and bigots. She would not have been deprived, by the expulsion of the Moors, of the most industrious part of her population. Naples and Sicily, like Spain, would have adopted the faith of their master; and it is probable that the peculiarities of Romanism, after lingering for a short time in a portion of France, of Italy, and of Poland, would have gradually died out, and have been remembered, with magic, astrology, and alchemy, as among the strange delusions of the dark unreasoning ages.

We cannot but be eager to know more of the men on whose conduct such vast consequences depended. To know how far that conduct was the result of the dispositions implanted in them by nature, and how far of the

circumstances in which they were placed. How far it is to be imputed to their advisers, and how far to the solitary working of their own faculties and passions.

We have ample materials to form an estimate of Luther. The business of his life was to write and to talk, and his friends preserved his letters and his conversation with the care, we may say the veneration, which all that came from such a man deserved. In his correspondence and his tisch-reden, we have a fuller and a more detailed revelation of his innermost man than we possess of any other person, with the single exception of Dr. Johnson.

We see his strong conscientiousness, his religious fervour, his impulsive sense of duty, his unwearied diligence, his heroic courage never rushing into rashness; his vivid imagination, checked, though not sufficiently controlled, by his strong reason; and as the result of these passions and faculties, an aggressive force, a power of destruction, which no spiritual reformer, except perhaps Mahomet, ever directed against deeply-rooted abuses. We see also a fearful amount of credulity, superstition, intolerance, and violence, to be imputed partly to the ignorance and rough energy of the sixteenth century, and partly to his severe and confined education, at first in privation, in want, and in beggary, and afterwards among the ascetic observances and dull degrading duties of a monastery.

We see, too, what perhaps was also the result of this education—his deep melancholy, his early and constantly increasing disgust at life, his regrets at not having died in infancy, his despair of improvement; indeed, his expecta-

tion that human affairs would go on from bad to worse till the last day — a day which he hoped and believed to be at hand — should close the reign of evil.

Until lately, Charles V. was known to English readers chiefly in the judicious but somewhat pompous pages of Robertson. Robertson remarks that the circumstances transmitted to us with respect to his private deportment and character, are fewer and less interesting than might have been expected from the number of the authors who have undertaken to write an account of his life. And the little that Robertson himself has related of them is so full of error, that we need not regret that he has not given us more.

Within the last twenty years, however, a flood of light has been shed on the details of the great figure, of which, till then, we had seen only the outlines. The 'Correspondenz des Kaisers Carl V.,' by Dr. Carl, published in 1845–46, the 'Colecion de Documentos ineditos para la Historia de España,' and the 'Relazioni degli Ambasciatori Veneti,' both works still in course of publication, and the 'Papiers d'Etat du Cardinal de Granvelle,' have revealed so much that was unknown, and rectified so much that was mistaken, in his history as an emperor and a king, that it might almost be rewritten; and it now appears that his life, from the time of his abdication, on which little had been published (and that little turns out to have been often erroneous), had been recorded with as much minuteness, and far more fidelity, than even that of Napoleon.

The new sources of information are, 'A Narrative of the Residence of Charles V. in the Monastery of Yuste,' written by one of the monks, and 'A Correspondence between Charles and his Family, and between his Confidential Attendants and the Spanish Court,' embracing rather more than two years, beginning with his arrival in Spain after his abdication, and terminating some months after his death.

These records, however, have, as yet, been imperfectly communicated to the public.

The narrative is now among the archives of the Court of Appeal of Brussels. M. Bakhuisen Van der Brinc has published an abridgement of it, and M. Gachard promises to print the whole text in a second volume, still unpublished, of his 'Retraite et Mort de Charles-Quint.'

The correspondence was buried in the royal archives of Simancas, which, as might have been expected from the puerile government of Spain, were carefully kept excluded from foreign, and indeed from native, eyes. In 1809, however, the Castle of Simancas was occupied by General Kellerman and his dragoons, acting in the name, and professing to be under the command, of King Joseph. They treated its contents as they usually treated everything that was Spanish. The documents which related to the history of France they sent to Paris, the rest they used as fuel; and when no more was wanted for that purpose, they cut open whole bundles for the sake of the string with which they were tied up. When the Duke of Wellington's surprise of Oporto and advance from Portugal occasioned

their retreat, they set fire to the castle and destroyed a large portion of it, with all that it contained.

Ferdinand VII. employed Don Tomas Gonzalez to rearrange and classify the remnant that had not perished during General Kellerman's occupation. While thus employed he discovered the correspondence relating to Charles V.'s residence at Yuste. The use to which he turned it was to make it the base of a work on the last two years of Charles's life, consisting of the letters which he thought deserving of publication, connected by a brief explanatory notice. At the time of his death in 1825 the work was transcribed for the press, but unprinted. Don Manuel Gonzalez, his brother, succeeded him in his office at Simancas, and inherited his papers. He was displaced and ruined by the revolution of 1836; and after some ineffectual efforts to get a higher price, sold the manuscript to the French Government in 1844. A mention of it in the 'Handbook of Spain' attracted Mr. Stirling's attention. With some difficulty he ascertained its fate, and with still more difficulty, with the united assistance of the President of the Republic, Lord Normanby, and M. Drouyn De L'huys, gained access to it. It is the foundation of what M. Mignet has well described as '*le charmant volume de M. Stirling*,' and of that portion of the work of M. Pichot which is subsequent to Charles V.'s abdication.

But neither of these writers saw the original documents: they quoted the narrative from Backhuisen, and the Correspondence from Gonzalez. M. Gachard, however,

the Archiviste General of Belgium, found the guardians of the treasures of Simancas more complaisant than they had been to any previous traveller. He appears to have had an unlimited permission to have papers copied. He used it to obtain copies of the 237 letters which are contained in the first volume of his work. Of these letters, 201 were written by Quijada, the Emperor's chamberlain, or mayordomo.

Luis Mendez Quijada, Lord of Villagarcia, had been thirty-four years in the service of the Emperor at the time of his abdication.

'Unconsciously portrayed,' says Mr. Stirling, 'in his own graphic letters, the best of the Yuste correspondence, he stands forth the type of the cavalier, and "old rusty Christian,"* of Castile—spare and sinewy of frame, and somewhat formal and severe in the cut of his beard and the fashion of his manners; in character reserved and punctilious, but true as steel to the cause espoused or the duty undertaken; keen and clear in his insight into men and things around him, yet devoutedly believing his master the greatest prince that ever had been or was to be; proud of himself, his family, and his services, and inclined, in a grave, decorous way, to exaggerate their importance; a true son of the Church, with an instinctive distrust of its ministers; a hater of Jews, Turks, heretics, friars, and Flemings; somewhat testy, somewhat obstinate,

* 'Cristiano viejo rancioso,' *Don Quixote*, p. i. cap. xxvii., so translated by Shelton.

full of strong sense and strong prejudice; a warm-hearted, energetic, and honest man.'

Fifty-seven of the letters were written by Martin Gaztelu, the Emperor's secretary.

'He,' says Mr. Stirling, 'comes next to the mayordomo in order of precedence, and in the importance of his functions. His place was one of great trust. The whole correspondence of the Emperor passed through his hands. Even the most private and confidential communications addressed to the Princess Regent by her father, were generally written, at his dictation, by Gaztelu; for the imperial fingers were seldom sufficiently free from gout to be able to do more than add a brief postscript, in which Doña Juana was assured of the affection of her *buen padre Carlos*. The secretary had probably spent his life in the service of the Emperor; but I have been unable to learn more of his history than his letters have preserved. His epistolary style was clear, simple, and business-like, but inferior to that of Quixada in humour, and in careless graphic touch, and more sparing in glimpses of the rural life of Estremadura three hundred years ago.'

Twenty-six letters from Dr. Cornelius Mathys, the Flemish physician who had the troublesome task of repairing the infirmities and controlling the appetite of his gouty edacious master, complete the gossiping correspondence which relates the domestic life of Charles V.

Nearly all the rest of the letters are political, and consist principally of a correspondence between Charles V. and his daughter, Doña Juana, acting as vice-Queen of

Spain; Juan Vasquez de Molina, her Secretary of State; Charles's sister, Mary, Queen Dowager of Hungary; and Philip II.

What the contents of M. Gachard's second volume will be we have not been informed, except that it will contain in full the narrative of the Monk of Yuste.

M. Pichot's work is, what he calls it, a chronicle. It is a collection of anecdotes, letters, conversations, and remarks relating to the domestic life of Charles V., both before and after his abdication, and to the persons who came most into contact with him. Its defect is that which most easily besets biographers—partiality to its hero. Some of the faults imputed to Charles V. M. Pichot extenuates; others he takes the bolder course of denying. When the evidence is doubtful, he explains it away; where it is positive, he discredits it. He disbelieves, for instance, much of the language ascribed to Charles V. by the Prior of Yuste, although the Prior's narrative was written at the request of the Infanta Juana by a man of high station, who professes to relate only what he witnessed, and although it is in perfect harmony with all the rest of the information respecting Charles that has reached us. M. Pichot's book, however, though written and arranged far less carefully than either of the others, is lively and amusing, and deserves an honourable place among the numerous biographies of which Charles V. has been the subject.

M. Mignet enjoyed the great advantages of writing the last, and of having the use of the original documents, the proof-sheets of M. Gachard's work having been communicated to him. His work is not so full as that of M. Pichot, nor so varied as that of Mr. Stirling, but it contains in a small space all that is historically important in the two last years of Charles V., arranged with the skill, and told with the elegance which place M. Mignet in the very first rank of modern historians.

As a specimen of the work, we translate the character of Charles V., with which it is concluded.

'I may be accused, perhaps, of having dwelt too much on the two last years of Charles V. But nothing that relates to a great man is unimportant. We are anxious to know what were his thoughts when he had ceased to act, and what was his life when he had ceased to reign. And these details explain the remarkable termination of his political existence. Complicated infirmities, unrestrained appetites, long-endured fatigue of mind, and increasing devotional fervour, carried him from the throne to the convent, and hurried him from the convent to the tomb.

'Charles V. was in every sense the greatest sovereign of the sixteenth century. Uniting the blood of the four houses of Aragon, Castile, Austria, and Burgundy, he inherited not only their vast territories, but their dissimilar peculiarities. The statesmanship, sometimes degenerating into cunning, of his grandfather, Ferdinand the Catholic—the magnanimity of his grandmother, Isabella of Castile,

mixed with the melancholy of his mother Johanna—the chivalrous audacity of his great-grandfather Charles the Bold, to whom he bore a personal resemblance—and the diligent ambition, love of the fine and of the mechanical arts of his grandfather, the Emperor Maximilian,—all these qualities were transmitted to him, together with their dominions and their schemes. He not merely supported but added to the greatness which had been accumulated on his head by the providence of many royal ancestors and the chances of many royal successions. The man stood erect under the load of the sovereign. For many years his talents, so high and so varied, enabled him to play, not without success, his many parts, and to carry on his many undertakings. But the task became too great for a single intellect.

'As King of Aragon he had to keep Sardinia, Sicily, and Naples, left to him by his predecessors, and to acquire Milan, lest his powerful rival, when once ruler of Northern Italy, might become master of the South. As King of Castile he had to conquer and colonise America. As Sovereign of the Low Countries he had to protect the possessions of the House of Burgundy against the House of France. As Emperor of Germany his political duty was to repel the Turks, then in the fulness of their strength and of their ambition; and his religious duty was to check the progress, or at least to prevent the triumph, of Protestantism. All these tasks he undertook. Aided by great captains and great statesmen, well chosen and skilfully employed, he managed with ability and perseverance a policy which was never simple,

and wars which recommenced as soon as they appeared to be terminated. He was to be seen in every country, facing every adversary, leading his own armies and conducting his own negotiations. He evaded no obligation imposed on him by his station or by his belief. But perpetually turned aside from one object by the necessity of pursuing another, he often began too late, and was forced to end too soon.

'Some of his enterprises he accomplished. In Italy, opposed by Francis I. and Henry II., at the price of thirty-four years of exertion and five great wars, in which a king of France and a pope were among his prisoners, he subjected one part of the country to his own government, and the remainder to his own influence. He not only preserved but extended his dominions in the Low Countries, adding to them Guelders, Utrecht, Zutphen, and Cambray, which he relieved from their vassalage to France. The Turk was in Hungary, and the corsairs of Africa habitually ravaged the coasts of Italy and the islands of the Mediterranean. He repulsed the formidable Solyman from before Vienna in 1532, tore Goletta and Tunis from the fierce Barbarossa in 1535, and would have conquered Algeria in 1541 if he had not been conquered himself by the elements. He would have made Christendom secure from attack by land or on sea, and have been himself the protector of the Mediterranean, instead of leaving it to his heroic son, the victor at Lepanto, if he had not been perpetually called away to meet a different danger in a different quarter.

'His attempt to force Germany back to her ancient faith failed only because it was made too late. He had neglected Protestantism while it was weak; when he attacked it, it was too strong, I will not say to be destroyed, but even to be restrained. For thirty years the tree had been growing, its roots had penetrated deep into the soil of Germany, its branches covered her fields. Who could then uproot it? The sovereign of Catholic Spain and of Catholic Italy, the chief of the Holy Roman empire, opposed to Protestantism, by his position and by his belief, he thought in 1546 that the time was come when his temporary toleration might be discontinued, and heresy might be put down by the force of arms or by the authority of a council. He was established in Italy, and successful in France and in Africa, and he marched on the Protestants of Germany. During two campaigns he was victorious over the Protestant troops. He could subdue armies, but not consciences. His religious and military triumph over nations that were resolved to be neither converted nor enslaved, roused every Protestant from the Elbe to the Danube. Old hatreds were revived; questions, supposed to have been long settled, were reopened.

'Charles turned to bay against calamity, but he had come to the end of his strength — of his good fortune — of his life. Exhausted by illness, overtaken in his last effort by an irremediable reverse, unfit for enterprise, almost for resistance, incapable of extending, almost of controlling, the vast empire which on his death was to be divided, having established his son in England, and made an

honourable truce with France, and determined not to treat with the victorious heresy of Germany, he effected, what he had long meditated, an abdication, which was demanded by the diseases of the man, the lassitude of the sovereign, and the feelings of the Christian.

"Abdication operated no change in him. The devotee was still a statesman. He had renounced power, but not the habits of command. Though he had become personally disinterested, he was ambitious for his son. From his monastery in 1557 he assailed Paul IV., as in 1527 from his throne he had rebuked Clement VII. He counselled Philip II. to follow up his advantage against Henry II. as vigorously as he himself had pushed his success against Francis I. He planned the means of defending Christendom against the Turks, whom he had repelled from Germany and vanquished in Africa. He continued to defend Catholicism against Protestantism with all his old sincerity and more than his old ardour, for his time of action was passed. He had now only to believe; and though a man's conduct may bend to circumstances, his convictions ought to be inflexible. He continued to be the head and the umpire of his family, the object of their love, their respect, and their obedience. Obstinate as a Spaniard in belief, sagacious and firm in policy, equal to every different emergency, what he had been on the throne he remained in the convent; his death was pious and humble, but his life lofty and magnanimous.' (P. 450.)

We are not sure whether we ought to quote from a book

so well known as that of Mr. Stirling; but we believe that our readers will not be sorry to be recalled to his brilliant, amusing pages, and to compare them with the balanced periods, the comprehensive condensations, and the well-considered antitheses of his accomplished successor. Mr. Stirling's character of Charles is thus introduced by the story of his death.

'Towards eight o'clock in the evening, Charles asked if the consecrated tapers were ready. He was evidently sinking rapidly. The physicians acknowledged that the case was past their skill, and that all hope was over. Cornelio retired. Mathys remained by the bedside, occasionally feeling the patient's pulse, and whispering to the group of anxious spectators, "His majesty has but two hours to live — but one hour — but half an hour." Charles meanwhile lay in a stupor, seemingly unconscious, but now and then murmuring a prayer and turning his eyes to heaven. At length he raised himself and called for "William." The physician looked towards the door, and said to the archbishop, who was standing in its shadow, "*Domine, jam moritur!*" The primate came forward with the chaplain Villalva, to whom he made a sign to speak. It was now nearly two o'clock in the morning of the twenty-first of September. Addressing the dying man, the favourite preacher told him how blessed a privilege he enjoyed in being about to die on the feast of St. Matthew, who for Christ's sake had forsaken wealth, as his majesty had forsaken imperial power.

'For some time the preacher held forth in this pious and

edifying strain. At last the Emperor interposed, saying, "The time is come: bring me the candle and the crucifix." These were cherished relics, which he had long kept in reserve for this supreme hour. The one was a taper from Our Lady's shrine at Montserrate, the other, a crucifix of beautiful workmanship, which had been taken from the dead hand of his wife at Toledo, and which afterwards comforted the last moments of his son at the Escorial. He received them eagerly from the archbishop, and, taking one in each hand, for some moments he silently contemplated the figure of the Saviour, and then clasped it to his bosom. Those who stood nearest to the bed now heard him say quickly, as if replying to a call, "*Ya, voy, Señor*,"—"Now, Lord, I go." As his strength failed, his fingers relaxed their hold of the crucifix, which the primate therefore took, and held up before him. A few moments of death-wrestle between soul and body followed; after which, with his eyes fixed on the cross, and with a voice loud enough to be heard outside the room, he cried "*Ay, Jesus!*" and expired.

'So ended the career of Charles V., the greatest monarch of the memorable sixteenth century. The vast extent of his dominions in Europe, the wealth of his transatlantic empire, the sagacity of his mind, and the energy of his character, combined to render him the most famous of the successors of Charlemagne. "Christendom," wrote a Venetian envoy* in 1551, in one of those curious secret

* Marino de' Cavalli: *Bulletin de l'Acad. Roy. de Bruxelles*, tom. xii. p. 57.

reports addressed by the keenest of observers to the most jealous of governments, "has seen no prince since Charlemagne so wise, so valorous, or so great as this Emperor Charles."

'Preeminently the man of his time, his name is seldom wanting to any monument of the age. He stood between the days of chivalry, which were going out, and the days of printing, which were coming in; respecting the traditions of the one, and fulfilling many of the requirements of the other. Men of the sword found him a bold cavalier; and those whose weapons were their tongues or their pens, soon learned to respect him as an astute and consummate politician. Like his ancestors, Don Jayme or Don Sancho, with lance in rest, and shouting Santiago for Spain! he led his knights against the Moorish host, among the olives of Goletta; and even in his last campaign in Saxony, the cream-coloured genet of the Emperor was ever in the van of battle, like the famous piebald charger of Turenne in later fields of the Palatinate. In the council chamber he was ready to measure minds with all comers; with the northern envoy who claimed liberty of conscience for the Protestant princes; with the magnifico who excused the perfidies of Venice; or with the still subtler priest, who stood forth in red stockings to gloze in defence of the still greater iniquities of the Holy See.

'In the prosecution of his plans, and the maintenance of his influence, Charles shrank from no labour of mind or fatigue of body. Where other sovereigns would have

sent an ambassador, and opened a negotiation, he paid a visit, and concluded a treaty. From Groningen to Otranto, from Vienna to Cadiz, no unjust steward of the house of Austria could be sure that his misdeeds would escape detection on the spot from the keen cold eye of the indefatigable Emperor. The name of Charles is connected, not only with the wars and politics, but with the peaceful arts, of his time: it is linked with the graver of Vico, the chisel of Leoni, the pencil of Titian, and the lyre of Ariosto; and, as a lover and patron of art, his fame stood as high at Venice and Nuremberg as at Antwerp and Toledo.

'There can be no doubt that the Emperor gave the true reasons of his retirement when, panting for breath, and unable to stand alone, he told the states of Flanders that he resigned the government because it was a burden which his shattered frame could no longer bear. He was fulfilling the plan which he had cherished for nearly twenty years. Indeed, he seems to have determined to abdicate almost at the time when he determined to reign.

'So powerful a mind as that of Charles has seldom been so tardy in giving evidence of power. Until he appeared in Italy, in 1529, the thirtieth year of his age, his strong will had been as wax in the hands of other men. Up to that time the most laborious, reserved, and inflexible of princes, was the most docile subject of his ministers. His mind ripened slowly, and his body decayed prematurely. By nature and hereditary habit a keen sportsman, in his youth

he was unwearied in tracking the bear and the wolf over the hills of Toledo and Granada; and he was distinguished for his prowess against the bull and the boar. Yet ere he had turned fifty, he was reduced to amuse himself by shooting crows and daws amongst the trees of his garden. The hand which had wielded the lance, and curbed the charger, was so enfeebled with gout, that it was sometimes unable to break the seal of a letter.

'Declining fortune combined with decaying health to maintain him in that general vexation of spirit which he shared with King Solomon. His later schemes of policy and conquest ended in nothing but disaster and disgrace. The Pope, the Turk, the King of France, and the Protestant princes of the Empire, were once more arrayed against the potentate, who in the bright morning of his career had imposed laws upon them all. The flight from Innsbruck avenged the cause which seemed lost at Muhlberg. The treaty of Passau, by placing the Lutheran religion amongst the recognised institutions of the Empire, overturned the entire fabric of the Emperor's policy, and destroyed his hopes of transmitting the imperial crown to his son. While the doctors of the Church assembled at Trent, in that council which had cost so much treasure and intrigue, continued their solemn quibblings, the Protestant faith was spreading itself even in the dominions of the orthodox house of Hapsburg. The finances both of Spain and of the other dominions of Austria were in the utmost disorder; and the lord of Mexico and Peru had been forced to beg a loan from the Duke of Florence. It is no

wonder, therefore, that Charles seized the first gleam of sunshine and returning calm to make for the long-desired haven of refuge; that he relieved his brow of its thorny crowns as soon as he had obtained an object dear to him as a father, a politician, and a devotee, by placing his son Philip on the rival throne of the heretic Tudors.

'His habits and turn of mind made a religious house the natural place of his retreat. Like a true Castilian,

> With age, with cares, with maladies opprest,
> He sought the refuge of conventual rest.

Monachism had for him a charm, vague, yet powerful, such as soldiership has for the young; and he was ever fond of catching glimpses of the life which he had resolved, sooner or later, to embrace. When the Empress died, he retired to indulge his grief in the cloisters of La Sisla, near Toledo. After his return from one of his African campaigns, he paid a visit to the noble convent of Mejorado, near Olmedo, and spent two days in familiar converse with Jeromites, sharing their refectory fare, and walking for hours in their garden alleys of venerable cypress.

'To the last Charles loved his woodland nest at Yuste. It has been said that he was wont to declare that he had enjoyed there more real happiness in one day than he had derived from all his triumphs,* an extravagant assertion, which is nevertheless far nearer the truth than the idle tale that his retirement was a long repentance of his abdication,

* Phil. Camerarii *Meditationes Historicæ*. 3 tom. 4to. Francofurti: 1602–9, i. p. 210.

'But the cloister, like the world, was not without its disappointments. He had escaped only from the pageantry of courts, not from the toil and excitement of public affairs. To Yuste he had come, seeking solitude and repose; but although his chamberlain complained bitterly that he had indeed found the one, his own long and laboured despatches proved that he enjoyed but little of the other. He began by attempting to confine his attention to a few matters in which he was specially interested, and which he hoped ere long to bring to a happy termination; but the circle gradually widened, and at last his anxious eye learned once more to sweep the whole horizon of Spanish policy. From the war in Flanders he would turn to the diplomacy of Italy or Portugal; and his plans for replenishing the treasury at Valladolid were followed by remarks on the garrisons in Africa, or the signal towers along the Spanish shore. He watched the course of the vessel of state with interest as keen as if the helm were still in his own hands; and the successes and the disasters of his son affected him as if they were his own.

'Unfortunately, in 1557 and 1558, the disasters greatly outnumbered and outweighed the successes. On one side of the account stood the brilliant but barren victory of St. Quentin, and the less signal but better employed victory of Gravelines; on the other there were the bullion riots at Seville, the disgraceful treaty of Rome, the loss of Calais and of Thionville, the sack of Minorca, and the outburst of heresy. He might well dread the arrival of each courier; and the destruction of the army of Oran was announced in

the despatches which lay unread on his table at the time of his death.

'In one point alone did Charles in the cell differ widely from Charles on the throne. In the world, fanaticism had not been one of his vices; he feared the keys no more than his cousin of England, and he confronted the successor of St. Peter no less boldly than he made head against the heir of St. Louis. While he held Clement VII. prisoner at Rome, he permitted at Madrid the mockery of masses for that pontiff's speedy deliverance. Against the Protestants he fought rather as rebels than as heretics, and he frequently stayed the hand of the victorious zealots of the Church. At Wittenburgh he set a fine example of moderation in forbidding the destruction of the tomb of Luther, saying that he contended with the living and not with the dead.* To a Venetian envoy, accredited to him at Bruxelles, in the last year of his reign, he appeared free from all taint of polemical madness, and willing that subjects of theology should be discussed in his presence, with fair philosophical freedom.†

'But once within the walls of Yuste, he assumed all the passions, prejudices, and superstitions of a friar. Looking back on his past life, he thanked God for the evil that he had been permitted to do in the matter of religious persecution, and repented him, in sackcloth and ashes, for having kept his plighted word to a heretic. Religion

* Juncker: *Vita Mart. Luteri*, sm. 8vo. Francofurti: 1699, p. 219. Sleidan: *De Statu relig. et reip.*, lib. xix., is cited as his authority.

† *Relatione* of Badovaro.

was the enchanted ground whereon his strong will was paralysed and his keen intellect fell grovelling in the dust.'

In one important respect M. Mignet's estimate of the character of Charles V. differs from that of Mr. Stirling. Mr. Stirling, as we have seen, absolves him from fanaticism during his imperial life, and affirms that it was only within the walls of Yuste that he assumed the passions and superstitions of a friar. M. Mignet believes that he was intolerant throughout; that he temporised with heterodoxy only where he did not feel strong enough to put it down; and that, whenever he dared, he was as fierce a persecutor on the throne as he wished to be when in the convent.

Charles's letters, now published in extenso, and his conversations, as reported by the prior of Yuste, establish M. Mignet's opinion.

The Inquisition had flourished in the appropriate soil of Spain. During the reign of Ferdinand and Isabella it had burnt 20,000 heretics, and banished 900,000,* and spread at least the appearance of Catholicism over the whole of the Peninsula. It wielded both civil and ecclesiastical power; it punished sins, crimes, and opinions; it covered the country with its judges, its officers, and its spies; it made its own laws, and executed them. What they were — what was its procedure — what was the nature and the amount of the evidence that it required — what were the doctrines which it punished by death, what by perpetual

* Mignet, p. 353.

imprisonment, what by exile, what by infamy, and what by confiscation—on what presumptions it employed torture against the accused, and against those who might be supposed to know or to suspect his opinions—all these were the mysteries of the Holy Office, into which it was dangerous even to enquire. This tribunal Charles supported, with all his authority, in Spain and in Sicily; he introduced it into the Low Countries, and was prevented only by an insurrection from establishing it in Naples.

But even the Inquisition could not effectually protect Spain from the contagion of Lutheranism.

'Alors,' says M. Mignet, 'dans l'Europe erúdite et raisonneuse, hardie par curiosité, religieuse en esprit, tout précipitait vers l'héresie: le savoir y disposait, la piété en rapprochait, la controverse y entraînait.'*

A little more than a year after the entrance of Charles into the monastery, he received from Vasquez, the secretary of his daughter, the vice-Queen of Spain, a letter dated the 27th of April, 1558, informing him that, four days before, Cazálla, his own chaplain, with his sister, and many other ladies of great reputation for piety, had been arrested by the Inquisition; that the son of the Marquis de Poza, Domingo de Rojas, a Dominican friar much venerated by the people, had fled; and that persons of high rank were supposed to be infected with heresy.†

Charles answers, not the secretary, but the vice-Queen herself. Considering that not only the safety of the kingdom, but the honour of God, is involved in the

* Mignet, p. 356.

† Gachard, tome i. p. 288.

matter, he implores her to urge Valdez, the Inquisitor General, to use the utmost despatch, and to punish all the guilty, without any exception, with the rigour and the publicity deserved by their crimes. Nothing but the absolute impossibility of moving prevents him from leaving his retreat in order personally to superintend the persecution.*

He appears to have written to the same effect to his own secretary, Quijada, then at Valladolid; for Quijada, on the 1st of May, reports a conversation with Valdez, in which, in obedience to Charles, he had advised summary procedure and immediate punishment, and Valdez had answered, that he thought it better to conform to the usual rules of the Holy Office; that by patience and solicitation confession might often be obtained, and if not so, then by ill-treatment and torture [con malos tratamientos y tormentos].†

Charles does not appear to have been quite satisfied.

On the 25th of May, he writes again to his daughter, and after lamenting, that after his comfort had been destroyed, and his salvation endangered, by the heresies of Germany, he should in his old age, when he had retired from the world to serve God, have to witness such audacious scoundrelism:‡ he repeats that, but for his reliance on her activity and severity, he should himself resume power in order to punish the guilty. 'As this business,' he continues, 'concerns more than any other our duty to God, it

* Gachard, tome i. p. 294. † Ibid. p. 290.

‡ We know of no better translation of 'una tan gran desverguenza y bellaqueria.'

is necessary that the remedy should be immediate, and the chastisement exemplary. I doubt whether the ordinary rule should be followed, which lets off with moderate punishment those who have sinned for the first time and renounce their guilt: seeing that it is probable, that being educated persons, whose heresy has been the result of enquiry, they will fall into it again. I will also suggest to you whether, in order to deprive them of public sympathy, they may not be proceeded against for sedition or treason. Perhaps it may be well to refer you, as a precedent, to my conduct in the Low Countries. I proposed to check the heresies that were imported from Germany, England, and France, by introducing the Inquisition. I was opposed, and it ended by a decree that all persons, whatever their station, guilty of the opinions therein mentioned, should ipso facto,* be burnt, and their properties confiscated: that spies should be appointed to discover the guilty and denounce them to the courts in order that the obstinate might be burnt alive and the repentant beheaded.† All which was done.' (*Ibid.* p. 297.)

Vasquez replies by answering for the severity of the Inquisition; and adds, that, as it is the cause of God, he hopes for divine assistance. (*Ibid.* p. 304.)

A still stronger light is thrown on the religious opinions of Charles by a conversation between him and some of the monks of Yuste, related by Martin de Angulo, the prior.

* 'Ipso facto fuesen quemados.' *Ipso facto*, we suppose, means, on summary conviction, a drum-head court-martial.

† 'Para que quemasen vivos a los pertinaces y a los que se reconciliasen les cortasen las cabezas.'

'The heretics,' he said, 'must be burnt — not to burn them would be to incur the sin which I incurred when I let Luther escape. I did not put him to death, because I would not violate the promise and the safe conduct which I had given to him. But I was wrong. I had no right to forgive a crime against God. It was my duty, without having any regard to my promise, to avenge the injury which his heresy had inflicted on God. I should probably have cut short its progress. It is very dangerous to talk with these heretics. They deceive you by their subtile studied reasonings. Therefore I never would enter into any discussion with them. When I was marching against the Landgrave and the Duke of Saxony, four of the Lutheran princes, speaking in the name of all, said to me, "Sire, we have taken arms, not to make war against your Majesty, or to renounce our allegiance, but because you call us heretics, and we believe that we are none. We have our learned men, your Majesty has yours. Let the question be discussed in your presence, and we bind ourselves to abide by your decision."

'I answered that I was not learned, but that the learned men might argue the matter among themselves, and that mine would report to me the result. Now if I had acted otherwise, and these heretics had got any of their doctrine into my head, how could I have got it out? For this reason I never would hear them, though they promised, if I would do so, to join me with all their troops. Afterwards, when I was flying before Maurice, with only six horsemen for my attendants, two princes of the Empire,

speaking again in the name of all, implored me to hear them explain and defend their religious opinions, and no longer to treat them as heretics, promising on that condition to support me with all their forces to drive the Turks from Hungary, and either to make me master of Constantinople, or to die in the attempt. I answered, that I would not buy, at that price, all Germany and France, and Spain and Italy: so I spurred my horse and left them.'*

Charles was one of the ablest men of his age, indeed of any age. His powerful natural talents had been exercised and strengthened by the constant management of great affairs, and by constant intercourse with eminent men. Yet such are the strange delusions by which the most powerful intellects may be abused on matters of religion, that he believed that the adopting, after full conscientious enquiry, an erroneous doctrine, was an injury to God and to man, a crime and a sin, to be punished by a cruel death here and by eternal misery hereafter. With a strange confusion of thought, he considered such errors voluntary, or he would not have punished them; and yet involuntary, or he would not have feared their being implanted in him by discussion.

That error may sometimes be voluntary must be admitted. The man who from carelessness or timidity neglects or refuses to ascertain the real grounds on which he believes and disbelieves—the Roman Catholic who, for fear of unsettling his mind, will not hear what the Protestant

* Cited from Sandoval by M. Gachard, *Bulletins de l'Académie Royale de Bruxelles*, tom. xii. p. 251. I^er^ partie.

has to say—the Trinitarian who refuses to discuss his faith with the Socinian — is right or wrong only by accident. The errors of a man who rejects information are as voluntary as any other part of his conduct. But the error of those who have never had an opportunity of ascertaining the truth, and of those who, after patient and candid examination, have come to a wrong conclusion, depends no more on the will than the bitter taste of camomile or the hot taste of pepper. We might as usefully punish a man for being sea-sick as for being convinced.

Again, it must be admitted that error, though involuntary, may lead to sin. A man may sin from not knowing what is his duty, or from believing that his duty consists mainly in the performance of things really useless, or from believing that his duty consists in doing acts absolutely mischievous: in other words, he may sin through ignorance or through superstition. But in such cases the danger of the error arises from its practical nature. If error be merely speculative there seems to be no reasonable ground for imputing to it any guilt.

Now, purely speculative questions are precisely those which have been most furiously debated. They have created more hatred, more bloodshed, more wars, and more persecution, than all practical questions put together. And for this reason, that practical questions generally admit of a decision. They are debated and disposed of. Speculative questions are eternal. Their premises are generally ambiguous, often unintelligible. The discussion resembles an argument between two deaf

men, in which neither attaches any meaning to the words uttered by the other. What is the real difference between the Transubstantiation of the Roman Catholics and the Consubstantiation of Luther? The former believe that by consecration the substance of the bread and wine are changed into the substance of the body and blood of Christ. Luther affirmed that 'The true body of Christ is present under the appearance of bread and also his true blood under the appearance of wine. And that that body and blood are not spiritual and fictitious, but the true and natural body which was born of the most Holy Virgin, which same body and blood are now sitting at the right hand of the Majesty of God in that divine Person who is called Christ Jesus.' *

And for the one or for the other of these opinions, each of them, we venture to say, devoid of meaning, thousands have thought it their duty to kill, and thousands have thought it their duty to die.

We have said that Charles was a man of extraordinary ability. He was also a man of extraordinary piety. Immersed as he was in politics and in wars, ruling and even administering great and dissimilar kingdoms, surrounded by enemies both foreign and domestic, managing the home affairs and the foreign affairs of Germany, the Netherlands, Spain, and Italy, providing and then commanding their armies and their fleets, his principal business, the matter which engrossed the most of his attention, was the working out his own salvation. And he

* Cited—Waddington's 'History of the Reformation,' vol. iii. p. 217.

believed the first requisite to salvation to be a correct faith. Such, however, was his conduct as to involve him in errors, the public mischief of which cannot be exaggerated; or, if there be any guilt in error, the private guilt. In the first place, his errors belonged to the class which we have termed voluntary. They were the result of his obstinate determination not to enquire. If on a march he had been told, 'Your maps are false, your guides are ignorant or treacherous; if you advance in this direction you will destroy your army — here are the proofs'—would he have refused to look at the evidence, burnt alive the informants, and continued his course?

In the second place, his errors led him not merely to reliance on useless observances and charms, but to ferocious cruelties, and, what was much worse, because much more permanent, than any death or torture inflicted on individuals, to measures which have kept in darkness and semi-barbarism one of the most energetic races, and perhaps the finest country, in Europe.

This is not the place to discuss Charles's chances of happiness in another world. We have to do only with his reputation in this. And we must say that, judging by the event, estimating him by the influence which his conduct has had over the subsequent fortunes of Europe, and indeed of America, we allot to him a conspicuous station among the enemies of mankind. He might have done more good, and he actually did more harm, than any sovereign that has reigned since Charlemagne.

BACON.*

[North British Review, August 1857.]

AFTER the novelists, and after Mr. Macaulay, Archbishop Whately is, perhaps, the English writer of the nineteenth century who has been most read. Between his first and his last publication forty-six years have passed, during few of which, perhaps during none, has his pen been unemployed. The mere catalogue of his works fills six pages. Several of them have reached a tenth edition—one a fourteenth; many are text-books in our universities and schools, and, from the elementary nature of their subjects — from their containing the rudiments of most of the mental sciences and of the mental arts — they have exercised, and continue to exercise, more influence over the opinions and over the moral and intellectual habits of those who are now actively engaged in public and in professional life, than can be attributed to the labours of any other living author.

And yet there is no popular writer who has been so seldom reviewed. This may be accounted for, partly by the nature of the studies to which Archbishop Whately has

* Bacon's Essays, with Annotations. By Richard Whately, D.D., Archbishop of Dublin. London, 1856. 8vo, pp. 517.

mainly devoted himself, and partly by the manner in which he has executed his task. Neither his material nor his workmanship is such as critics like to meddle with.

Theology, morals, and metaphysics, are the tritest portions of human knowledge. During thousands of years, the attributes of the Deity, the affections of the human heart, and the faculties of the human mind, were the favourite subjects of philosophical enquiry. They engrossed the attention of the acutest and the most diligent thinkers. Reason was enlightened by Revelation; and, for more than 1,800 years, the Revelation itself has been commented on by the whole civilised world. To be original in such matters — to discover inferences and analogies of any value, which shall have escaped undetected by so long and so careful an examination — is an attempt from which the most sanguine may well recoil. The bulk of critics prefer gleaning fields which have been less carefully reaped. They turn to political economy, to legislation, to criticism, to history, to biography, to physical science, — in short, to studies which are so recent, that their most accessible treasures are still unexhausted, or which, depending rather on observation than on consciousness, rather on testimony than on inference, are practically inexhaustible. Working on such materials, they may expect to inform or to amuse. As expounders of Archbishop Whately's reasonings, all that they can hope is to instruct — to lead the reader to admit propositions which, though unperceived, had been implied in his previous knowledge.

This, without doubt, can be done. Trite as are his

subjects, the Archbishop's works are eminently original. They are full of new analogies, of subtle discriminations, and of inferences, of which the reader recognises both the truth and the novelty, feels that they had never struck him before, but that they follow necessarily from premises with which he is familiar.

But a critic is not satisfied by acting the part of a mere expounder. He wishes not to follow, or even to accompany, but to precede, his author; to clear up his confusion, to expose his fallacies, and to show that even when he is right he is right imperfectly — that he has seen the truth, but not the whole truth, and has left it to his reviewer to draw from his premises their full conclusions.

We have all studied Bacon's advice — 'In seconding another, yet to add somewhat of one's own; as, if you will grant his opinion, let it be with some distinction; if you will follow his motion, let it be with condition; if you allow his counsel, let it be with alleging further reason.'*

The victim whom we delight to immolate is a puzzle-headed, ingenious rhetorician, whose absurdities and inconsistencies may serve as pegs for our own theories, and as foils to them. But against this treatment Archbishop Whately's works are proof. They have been carefully elaborated in a capacious and patient intellect, animated by a love of truth, and a hatred of disguise amounting almost to passion. They contain few premises thrown out rashly, none assumed insincerely, and no inferences which the author does not believe to be legitimate; and small indeed are the chances of finding a flaw in the logic.

* Essay on Ceremonies and Respects.

The work, of which we have prefixed the title, is not peculiarly fit for criticism. Its fragmentary nature makes it impossible to give any general view of it. But, though it has already reached a third edition, it is the newest of the Archbishop's works; and though, without doubt, already widely known, it is probably less so than anything that he has published since 1844. We shall incur less danger of encumbering our pages with quotations with which the reader is already familiar, and of pronouncing judgements, which he has himself anticipated.

The essays of Bacon do not require an annotator for the purpose of explaining obscurities: for, as is the case with almost all clear-thinkers, he is an eminently perspicuous writer. Nor is there much that is obsolete in his language. Like Shakspeare, he seems to have anticipated many modern refinements. Whole pages occur in which nothing betrays antiquity except a naïveté and simplicity of diction, seldom found in the writings of those who have the fear of critics before their eyes, and an exuberance of classical quotation, which was natural when the bulk of our literature was Roman or Greek.

But, though Bacon's essays require little explanation, they are susceptible, as this volume shows, of great developement. They were intended, as the Archbishop remarks, and as the word essay in its original acceptation expresses, to be tentamina; not finished treatises, but sketches, to be filled up by the reader,—hints, to be pursued—thoughts, thrown out irregularly, to suggest further

enquiries and reflections. They possess, therefore, little unity or continuity, and when reviewing them it is difficult to find a principle to follow in the selection of topics. We will begin by the essay on Unity in Religion.

Bacon had the misfortune to live in a bigoted and a persecuting age — in an age which believed that, in religious matters, error, though merely speculative, though totally incapable of influencing human conduct, though relating to things far beyond the reach of the human faculties, is not only sin, but sin for which men 'without doubt shall perish everlastingly;' and, still further, believed it to be the duty of the civil governor, in the words of the English Liturgy, 'to execute justice and to maintain truth;' that is to say, to maintain truth by the execution of justice. From bigotry, however, he appears to have been free. In his advertisement on Church Controversies,* he reprobates the 'curious questions and the strange anatomies of the natures and person of Christ,' which divided the Christian churches in the first centuries, when 'ingeniosa res fuit esse Christianum;' and still more those 'about ceremonies, and things indifferent, and the external policy and government of the Church.' He suggests a doubt — a doubt which, in those days, must have shocked the majority of his readers — whether, 'in the general demolition of the Church of Rome, there were not, as men's actions are imperfect, some good purged with the bad;' and he ends his 'Considerations on the Pacification of the Church'† by a passage which we quote below,

* Works, vol. ii. p. 501. † Ibid. p. 529.

and which well deserves to be pondered by our modern ecclesiastical factions.

But he cannot be as fully exonerated from the charge of having been, to some degree, intolerant. He disapproved, indeed, of 'the propagation of religion by wars, or by sanguinary persecutions, to force consciences;' but he adds, that 'there be two swords among Christians, the spiritual and the temporal, and both have their due office in the maintenance of religion;' and that 'the temporal sword is to be drawn with great circumspection in cases of religion.' He objected, therefore, not to the use, but merely to the abuse, of persecution. He did not perceive that any employment whatever of the temporal sword in cases of religion, whether rashly or with circumspection, is opposed not merely to the spirit, but to the express precepts, of Christianity — to the formal renunciation by our Lord of all temporal dominion, and of all coercive influence.

His desire, however, for unity, was confined to 'points fundamental, and of substance in religion.' 'For the point,' he says,* 'that there should be but one form of discipline in all churches, and *that* imposed by necessity of a commandment and prescript out of the word of God, is a matter volumes have been compiled of, and therefore cannot receive a brief redargution. I, for my part, do confess that, in revolving the Scriptures, I could never find any such thing; but that God had left the like liberty to the Church government as He had done to the civil government — to be varied according to time, and place,

* Essay on Unity in Religion, p. 19.

and accidents; which, nevertheless, His high and Divine providence doth order and dispose. For all civil governments are restrained from God unto the general grounds of justice and manners; but the policies and forms of them are left free; so that monarchies and kingdoms, senates and seignories, popular states, and commonalties, are lawful, and, where they are planted, ought to be maintained inviolate.

'So likewise in Church matters, the substance of doctrine is immutable, and so are the general rules of government; but for rites and ceremonies, and for the particular hierarchies, policies, and disciplines of churches, they be left at large. And therefore it is good we return unto the ancient bounds of unity in the Church of God, which was, "one faith, one baptism," and not "One hierarchy, one discipline;" and that we observe the league of Christians, as it is penned by our Saviour, which is, in substance of doctrine, this—"*He that is not with us is against us*;" but, in things indifferent, and but of circumstance, this—"*He that is not against us is with us*;" as it is excellently alluded to by that father that noted, that Christ's garment was without seam, and yet was of divers colours; and thereupon setteth down for a rule, "In veste varietas sit, scissura non sit."

'Heresies and schisms are of all others the greatest scandals, yea, more than corruption of manners; for as in the natural body a wound or solution of continuity is worse than a corrupt humour, so in the spiritual; so that nothing doth so much keep men out of the Church, and

drive men out of the Church, as breach of unity; and, therefore, whensoever it cometh to that pass, that one saith, "Ecce in deserto," another saith, "Ecce in penetralibus;"—that is, when some men seek Christ in the conventicles of heretics, and others in an outward face of a church, that voice had need continually to sound in men's ears, "Nolite exire."'

Why false religions are permitted to spring up and to endure is a portion of the insoluble problem of the origin of evil — a problem which meets and arrests every speculator, Christian, Pagan, Deist, or Atheist, at every turn.

But the existence of *heresies*, in other words, of those controversies among Christians that arise from the ambiguous words in which some of the doctrines of Christianity have been revealed or recorded, seems to be more capable of explanation.

There is obviously no subject which man ought to approach with such reverence, such caution, indeed such timidity, as the attributes of the Deity. We cannot venture to set any bounds to them. We cannot venture to treat His power, His knowledge, or His benevolence as limited. But nothing that is unlimited is conceivable by the human mind. A being, therefore, of infinite attributes is to us incomprehensible. When we attempt to reason about him, it is only on hypothesis, and by analogy. Our hypothesis—an hypothesis which looks rash and absurd, and probably *is* absurd, but is, after all, our only hypothesis, —is, that His motives and his conduct resemble the motives and the conduct of the only being with whom we can compare Him—a wise and benevolent man.

Now, if a man, with power to express his meaning clearly, and with knowledge enabling him to foresee how his words will be interpreted, use language susceptible of different interpretations, we infer that he *intends* it to be differently interpreted.

We may add, that we see some reasons, we will not say for affirming, but for suspecting, that schisms founded on mere metaphysical questions are not without their utility.

Men do not seem to be improved by being thrown together in great homogeneous masses. The Chinese Empire—the largest aggregation of human beings with one government, one written language, and substantially one religion, that was ever collected — contains, perhaps, the most corrupt and the least improvable people that can be called civilised. Differences of language, of climate, and of habits, seem to be among the means employed by Providence to break men into smaller communities, in which individual merit may hope to make its way, and which improve one another by emulation and collision.

Some of the speculative differences which divide Christians may be intended to produce the same effect. We have no doubt that we owe much of the earnest religious belief and feeling which distinguish the Anglo-Saxon race to the prevalence of dissent. The great improver of the English clergy was Wesley. In Italy there is no dissent; but how much is there of religion?

Bacon's Essay on Envy is the work of a man who had suffered much from the envious. He passed the earlier

and the most active portion of his life in a small, ambitious, intriguing society, in which all were acquaintances and rivals; and the sovereign — the last and the best despot that England has ever endured — could scatter prizes, such as, in our sober aristocratical community, only Parliament can give, and only once perhaps in a century. All the ambitious, all the covetous, and all the vain, crowded to the court, to contend, by flattery, by subservience, and, we must add, by real service, for the favour which gave power, wealth, and station. Such a court was a hotbed of envy; and Bacon's masterly enumeration of those apt to envy, and of those apt to be envied, is evidently the result of personal observation and experience. It is remarkable that he appears to have been infected by the Oriental superstition of the evil eye.

'There be none of the affections,' he says, 'which have been noted to fascinate or bewitch, but love and envy; they both have vehement wishes, they frame themselves readily into imaginations and suggestions, and they come easily into the eye, especially upon the presence of the objects; which are the points that conduce to fascination, if any such thing there be. We see, likewise, the Scripture calleth envy an evil eye, and the astrologers call the evil influences of the stars evil aspects; so that still there seemeth to be acknowledged, in the act of envy, an ejaculation or irradiation of the eye; nay, some have been so curious as to note that the times when the stroke or percussion of an envious eye doth most hurt, are when the party envied is beheld in glory or triumph, for that sets an

edge upon envy; and besides, at such times the spirits of the person envied do come forth most into the outward parts, and so meet the blow.' *

We once, in Cairo, conversed on this superstition with an intelligent Cairene, who described it as the great curse of his country.

'Does the mischievous influence of the evil eye,' we asked, 'depend on the will of the person whose glance does the mischief?'

'Not altogether,' he answered. 'An intention to harm may render more virulent the poison of the glance; but envy, or the desire to appropriate a thing, or even excessive admiration, may render it hurtful without the consciousness, or even against the will of the offender. It injures most the thing that it first hits. Hence the bits of red cloth that are stuck about the dresses of women, and about the trappings of camels and horses, and the large spots of lampblack which you may see on the foreheads of children. They are a sort of conductors. It is hoped that they will attract the glance, and exhaust its venom.

'A fine house, fine furniture, a fine camel, and a fine horse, are all enjoyed with fear and trembling, lest they should excite envy and bring misfortune. A butcher would be afraid to expose fine meat, lest the evil eye of passers-by, who might covet it, should taint it, and make it spoil, or become unwholesome.

* Essay on Envy, p. 75.

'Children are supposed to be peculiarly the objects of desire and admiration. When they are suffered to go abroad, they are intentionally dirty and ill-dressed; but generally they are kept at home, without air or exercise, but safe from admiration. This occasions a remarkable difference between the infant mortality in Europe and in Egypt. In Europe it is the children of the rich who live; in Egypt it is the children of the poor. The children of the poor cannot be confined. They live in the fields. As soon as you quit the city, you see in every clover field a group, of which the centre is a tethered buffalo, and round it are the children of its owner, with their provision of bread and water, sent thither at sunrise, and to remain there till sunset, basking in the sun, and breathing the air from the desert. The Fellah children enter their hovels only to sleep, and that only in the winter. In summer, their days and nights are passed in the open air; and, notwithstanding their dirt and their bad food, they grow up healthy and vigorous. The children of the rich, confined by the fear of the evil eye to the "hareem," are puny creatures, of whom not a fourth part reaches adolescence. Achmed Pasha Tahir, one of the governors of Cairo under Mehemet Ali, had 280 children; only six survived him. Mehemet Ali himself had 87; only 10 were living at his death.

'I believe,' he added, 'that at the bottom of this superstition is an enormous prevalence of envy among the lower Egyptians. You see it in all their fictions. Half of the stories told in the coffee-shops, by the professional

story-tellers, of which the Arabian Nights are a specimen, turn on malevolence.—Malevolence, not attributed, as it would be in European fiction, to some insult or injury inflicted by the person who is its object, but to mere envy: envy of wealth, or of the other means of enjoyment, honourably acquired and liberally used.'

In distinguishing the persons more or less subject to envy, Bacon states that 'persons of eminent virtue, when they are advanced, are less envied, for that their fortune seemeth but due to them; and no man envieth the payment of a debt, but rewards and liberality rather.'

The Archbishop has qualified this remark by the following acute note:—'Bacon might have remarked, that, in one respect, a rise by merit exposes a man to more envy than that by personal favour, through family connection, private friendship, &c. For, in this latter case, the *system* itself of preferring private considerations to public, is chiefly blamed, but the *individual* thus advanced is regarded much in the same way as one who is *born* to an estate or title. But when anyone is advanced on the score of desert and qualifications, the system is approved, but the individual is more envied, because his advancement is felt as an affront to all who think themselves or their own friends more worthy.'

'It is quite right to advance men of great merit; but, by this rule, it is I, or my friend so-and-so, that ought to have been preferred. When, on the other hand, a bishop or a minister appoints his own son or private friend to

some office, everyone else is left free to think, "if it had gone by merit, *I* should have been the man." '*

The Essay on Goodness is, according to our use of the word goodness, improperly entitled; for by 'Goodness' Bacon means Beneficence.

'It admits,' he says, 'no excess but error. The desire of power in excess caused angels to fall; the desire of knowledge in excess caused man to fall. But in charity there is no excess: neither angel nor man can come in danger by it. The inclination to goodness is imprinted deeply in the nature of man, insomuch that, if it issue not towards men it will take unto other living creatures; as is seen in the Turks, a cruel people, who nevertheless are kind to beasts, and give alms to dogs and birds. Errors, indeed, in this virtue may be committed; therefore it is good to take knowledge of the errors of a habit so excellent. Seek the good of other men, but be not in bondage to their faces or fancies; for that is but facility or softness, which taketh an honest mind prisoner. Neither give thou Æsop's cock a gem, who would be better pleased and happier if he had a barleycorn. The example of God teacheth the lesson truly: "He sendeth His rain, and maketh His sun to shine upon the just and the unjust;" but He doth not rain wealth nor shine honour and virtues upon men equally: common benefits are to be communicated with all, but peculiar benefits with choice. And beware how, in making the portraiture, thou breakest the

* P. 81.

pattern; for Divinity maketh the love of ourselves the pattern — the love of our neighbours but the portraiture: "Sell all thou hast, and give it to the poor, and follow Me;" but sell not all thou hast, *except* thou come and follow Me;—that is, except thou have a vocation wherein thou mayest do as much good with little means as with great; for otherwise, in feeding the streams, thou driest the fountain.'

It is to be observed, that the evils which Bacon points out as likely to follow ill-directed benevolence, are evils affecting the giver. He does not appear to have seen that it inflicts evils far greater in amount, and far more mischievous in kind, upon the receiver. In the long contest between the labourer, desirous of choosing for himself his residence, his master, and his occupation, and the employer, anxious to confine him in the political prison of a parish, and to force him to work there for such wages as the justices should think fit, success was at first on the side of the labourer. The imprisonments, whippings, slavery, chains, mutilation, and death, denounced against sturdy vagabonds — that is, against those who, having no property but their labour, presumed to act as if they thought that they had a right to dispose of it—had failed. 'Partly,' says the preamble to the 1st Ed. vi. c. 3, 'by foolish pity and mercy of them which should have seen the said goodly laws executed, and partly from the perverse nature and long-accustomed idleness of the persons given to loitering, the said goodly statutes have had small effect.' It was not until the times of George III., when the prime

minister proposed to make parochial relief a matter of right and an honour, and one of the leaders of the Opposition complained that he had searched the statute-book in vain for a law to compel the farmers to do their duty, and to raise wages with the price of provisions, that the friends of the labourer succeeded in reducing him to a slavery and a degradation which his enemies had been unable to inflict.

Archbishop Whately, writing after the experience of two centuries and a half, sees much more clearly than Bacon the real mischiefs of misdirected beneficence.

'Bacon,' he says,* 'is speaking of what is now called benevolence and beneficence; and his remark is very just, that it admits of no excess in quantity, though it may be misdirected and erroneous. For if your liberality be such as to reduce your family to poverty, or—like the killing of the hen that laid the golden eggs—such as to put it out of your power hereafter to be liberal at all, or if it be bestowed upon the undeserving, this is rather to be accounted an unwise and misdirected benevolence than an excess of it in quantity. And we have here a remarkable instance of the necessity of keeping the whole character and conduct, even our most amiable propensities, under the control of right principle, guided by reason, and of taking pains to understand the subject relating to each duty which you are called on to perform. For there is, perhaps, no one quality that can produce a greater amount of mischief than may be done by thoughtless good nature.

* P. 109.

For instance, if anyone, out of tenderness of heart and reluctance to punish or to discard the criminal and worthless, lets loose on society mischievous characters, he will have conferred a doubtful benefit on a few, and done incalculable hurt to thousands. So also—to take one of the commonest and most obvious cases, that of charity to the poor—a man of great wealth, by freely relieving all idle vagabonds, might go far towards ruining the industry, and the morality, and the prosperity of a whole nation. For there can be no doubt that careless, indiscriminate alms-giving, does far more harm than good, since it encourages idleness and improvidence, and also imposture. If you give freely to ragged and filthy street-beggars you are, in fact, *hiring* people to dress themselves in filthy rags, and go about begging with fictitious tales of distress. If, on the contrary, you carefully enquire for and relieve honest and industrious persons, who have fallen into distress through unavoidable misfortunes, you are not only doing good to those objects, but also holding out an encouragement generally to honest industry.'

'You may, however, meet with persons who say, "As long as it is my intention to relieve real distress, my charity is equally virtuous, though the tale told me may be a false one. The impostor alone is to be blamed who told it me: I acted on what he said; and if that is untrue, the fault is his, and not mine." Now, this is a fair plea, if anyone is deceived after making careful enquiry; but if he has not taken the trouble to do this, regarding it as no concern of his, you might ask him how he would act

and judge in a case where he is thoroughly in earnest—that is, where his own interest is concerned. Suppose he employed a steward or other agent to buy for him a horse, and this agent paid an exorbitant price for what was really worth little or nothing, giving just the same kind of excuse for allowing his employer to be thus cheated, saying, "I made no careful enquiries, *but took the seller's word*; and his being a liar and a cheat is his fault, and not mine;" the employer would doubtless reply, "The seller, indeed, is to be condemned for cheating; but so are you for your carelessness of my interests. His being greatly in fault does not clear *you*; and your merely intending to do what was right, is no excuse for your not taking pains to gain right information."

'Now, on such a principle we ought to act in our charities: regarding ourselves as stewards of all that Providence has bestowed, and as bound to expend it in the best way possible, and not shelter our own faulty negligence under the misconduct of another.

'It is now generally acknowledged that relief afforded to want, as mere want, tends to increase that want; while the relief afforded to the sick, the infirm, and the disabled, has plainly no tendency to multiply its own objects. Now, it is remarkable that the Lord Jesus employed His miraculous power in healing the sick *continually*, but in feeding the hungry only twice; while the power of multiplying food, which He then manifested, as well as His directing the disciples to take care and gather up the fragments that remained, that nothing might be lost,

served to mark, that the abstaining from any like procedure on other occasions was deliberate design. In this, besides other objects, our Lord had probably in view to afford us some instruction, from His example, as to the mode of our charity. Certain it is, that the reasons for this distinction are now, and ever must be, the same as at that time. Now, to those engaged in that important and inexhaustible subject of enquiry, the internal evidence of Christianity, it will be interesting to observe here one of the instances in which the superhuman wisdom of Jesus forestalled the discovering of an important principle, often overlooked, not only by the generality of men, but by the most experienced statesmen and the ablest philosophers, even in these later ages of extended human knowledge and development of mental power.'

Bacon published, at different times, two comparisons of Youth with Old Age; the first in 1602, when he was in his forty-second year;* the second in 1623, when he was in his sixty-second year,† and already sinking under premature decrepitude.

It is remarkable that his earlier work is by far the less unfavourable to old age. He admits that, 'for the moral part, *perhaps*, youth will have the advantage, as age for the politic;' that 'the more a man drinketh of the world, the more it intoxicateth;' and that 'age doth profit rather in the powers of the understanding than in the virtues of

* Essay on Youth and Age.

† Historia Vitæ et Mortis. Discrimina juventutis et senectutis.

the will and affections.' But these are the only hints of any moral superiority in the young.

In the 'Historia Vitæ et Mortis,' however, in almost every moral quality, the advantage is given to youth.

'The young,' he says, 'are modest; the old, hardened. The young are kind and compassionate; the old, callous. To the young belongs laudable emulation; to the old, malignant envy. The young are inclined to religion and to devotion by their fervour and by their inexperience of evil; the piety of the old is chilled by their want of charity, by their long familiarity with evil, and by their tendency to unbelief. In youth, the will is strong; in age, it is moderate. The young are volatile and changeable; the old, grave and firm. The young are liberal and kindly; the old, avaricious, self-seeking, and self-wise. The young are confiding and hopeful; the old diffident and suspicious. The young please, and are easily pleased; the old are morose and fastidious. The young are open and frank; the old, cautious and reserved. The young desire what is great; the old take pains for what is necessary. The young admire the present; the old, the past. The young revere their superiors; the old judge them. Still the old, until they are in their dotage, have some advantages: though their invention be barren, their judgment is clear: they prefer the safe to the specious; their garrulity, and even their vanity, has its use; as they cannot act, they talk — hence the fable that Tithonus was turned into a cricket.'

The reader may perhaps be interested by comparing Bacon's view of old age with that of Aristotle. We will

translate the fifteenth chapter of the second book of the *Rhetoric.*

'The aged,' says Aristotle, 'having lived long in a world in which evil predominates—having frequently failed, and frequently been deceived—rely on nothing, trust nothing, and have rather opinions than knowledge. Their propositions are always qualified by a "probably" or a "perhaps." They are uncharitable, taking everything in its worst sense. They are suspicious, because experience has deprived them of confidence. They neither love nor hate; or rather, obeying the precept of Bias, they treat their friends as possible enemies, and their enemies as possible friends. Life has humbled them; they desire nothing great or even extraordinary, and are satisfied with what is barely necessary. They are stingy; for they know that money must be had, and that it is hard to earn and easy to lose. Their coldness makes them timid, as the warmth of the young makes them bold. They love life, and more and more dearly as its end approaches; for men desire most the things of which they have least. Their selfishness makes them prefer what is useful to what is great; for utility is relative to the individual, greatness is intrinsic. They are shameless, because caring only for what is profitable they are indifferent to opinion. They have seen that most things are bad, and that most events turn out ill; and therefore they are desponding. As their past life is long, and their future life short, they live rather in memory than in hope, and hence their garrulity. Their resentment is quick but weak, and so are the desires that have not left

them; hence their apparent temperateness. Their great object is gain. They are governed rather by reason than by impulse; for reason comes from the head, impulse from the heart. Their injuries are rather malicious than insolent. Their pity is the result not of kindness but of weakness; if they sympathise with misfortune, it is because they expect misfortune.'

We cannot but suspect that the picture drawn by Bacon was, in some of its features, borrowed from Aristotle. It is less full and less precise, and inferior to the comparison of the intellectual qualities of the young and the old contained in his essay on Youth and Age. There are passages in that essay equal in wisdom of thought, and force, and concentration of style, to anything that he ever wrote.

'Young men are fitter to invent than to judge, fitter for execution than for counsel, and fitter for new projects than for settled business; for the experience of age, in things that fall within the compass of it, directeth them, but in new things abuseth them. The errors of young men are the ruin of business, but the errors of aged men amount but to this — that more might have been done, or sooner. Young men, in the conduct and manage of actions, embrace more than they can hold; stir more than they can quiet; fly to the end, without consideration of the means and degrees; pursue some few principles which they have chanced upon absurdly; care not to innovate, which draws unknown inconveniences; use extreme remedies at first, and that, which doubleth all errors, will not acknowledge or retract them, like an unready horse, that will

neither stop nor turn. Men of age object too much, consult too long, adventure too little, repent too soon, and seldom drive business home to the full period, but content themselves with a mediocrity of success.'

Archbishop Whately has accounted, with great perspicacity, for the unfavourableness of Aristotle's picture of old age:—

'Many readers of Aristotle's admirable description of the young and the old forget that he is describing the *same* man at different periods of life, since the old must *have* been young. As it is, he gives just the right view of the character of the "natural man" (as the Apostle Paul expresses it), which is to become, on the whole, gradually worse, when no superior and purifying principle has been implanted. Some people fancy that a man grows good by growing old, without taking any particular pains about it. But "the older the crab-tree, the more crabs it bears," says the proverb. Unless a correcting principle be *engrafted*, a man may, perhaps, outgrow the vices and follies of youth, but other vices, and even worse, will come in their stead. If, indeed, a wilding tree be grafted when young with a good fruit tree, then the older it is, if it be kept well pruned, the more good fruit it will bear.' *

This explanation, however, does not apply to Bacon, for *he* wrote in a Christian community—a community in which men were as eager as to religious questions, and probably as much influenced by religious feelings, as they are now. If it be true, as we think that it is, that our

* Note, p. 388.

aged contemporaries are more amiable and more agreeable than those whom he has described, that superiority must be accounted for by supposing either that they have been improved by the general progress of civilisation, or that the society from which Bacon took his models was morally below the average at that time, or, lastly, that he wrote under the influence of temporary ill-humour.

It is remarkable that Bacon, who took this despondiñg view of the influence of time on the human heart, appears himself to have improved as he grew older. His Essays, as they were first published in 1597, when he was about thirty-seven, are addressed almost exclusively to the intellect. As intellectual exercises, they are unsurpassed. The very first, the Essay on Study, contains more thought, and more closely packed, than perhaps any other English composition. But there is no ἦθος in any one of them. If a person unacquainted with their respective dates were to compare the Essay on Followers and Friends, which is now nearly in the state in which it was printed in 1597, with that on Friendship, published fifteen years afterwards, he would suppose the former to be the work of a veteran, whose kindly feelings have been dried up by long experience of treachery and ingratitude, and the latter, that of a youth, eager for sympathy, ready to trust, and miserable if he cannot find one to whom he can 'impart griefs, joys, fears, hopes, suspicions, counsels, and whatsoever lieth upon the heart to oppress it, by a kind of civil shrift or confession.'

There cannot be a more melancholy opinion than that

with which the Essay on Followers and Friends concludes: — 'There is little friendship in the world, and least of all between equals, which was wont to be magnified. That that is, is between superior and inferior, whose fortunes may comprehend the one the other.'

Contrast this with one of the first sentences in the Essay on Friendship: —

"'Little do men perceive what solitude is, and how far it extendeth; for a crowd is not company, and faces are but a gallery of pictures, and talk but a tinkling cymbal, where there is no love. The Latin adage meeteth with it a little: "Magna civitas, magna solitudo," — because in a great town friends are scattered, so that there is not that fellowship, for the most part, which is in less neighbourhoods; but we may go further, and affirm most truly, that it is a mere and miserable solitude to want true friends, without which the world is but a wilderness; and, even in this sense also of solitude, whosoever in the frame of his nature and affections is unfit for friendship, he taketh it of the beast, and not from humanity.'

The first three of the Essays, which appeared for the first time in the edition of 1825, and are probably among the very last things which he wrote — the Essay on Truth, on Revenge, and on Adversity—give to his character its most Christian, its loftiest, and its grandest features. He must have soared high above the region of ambition, avarice, subservience, and intrigue, in which he lived, as a lawyer, a courtier, and a chancellor, when he wrote, 'Truth, which only doth judge itself, teacheth that the

enquiry of truth, which is the love-making or wooing of it — the knowledge of truth which is the presence of it — and the belief of truth, which is the enjoying of it — is the sovereign good of human nature. Certainly it is a heaven upon earth to have a man's mind move in charity, rest in Providence, and turn upon the poles of truth.' *

He must have conquered resentment and regret when he felt that 'that which is past is gone and irrevocable, and wise men have enough to do with things present and to come; therefore they do but trifle with themselves that labour in past matters.

'There is no man doth a wrong for the wrong's sake, but thereby to purchase himself profit, or pleasure, or honour, or the like; therefore, why should I be angry with a man for loving himself better than me? And if any man should do wrong merely out of ill-nature, why, yet it is but like the thorn or brier, which prick and scratch because they can do no other.

'Cosmus, Duke of Florence, had a desperate saying against perfidious or neglecting friends, as if those wrongs were unpardonable. "You shall read," saith he, "that we are commanded to forgive our enemies, but you never read that we are commanded to forgive our friends."

'But yet the spirit of Job was in a better tune: "Shall we," saith he, "take good at God's hands, and not be content to take evil also?" and so of friends in a proportion. This is certain, that *a man that studieth revenge, keeps his own wounds green, which otherwise would heal and do well.*' †

* Essay on Truth, p. 3.

† Essay on Revenge, p. 41.

We believe that the explanation of his improvement is to be found in the Essay on Adversity.

'Prosperity is the blessing of the Old Testament; adversity is the blessing of the New, which carrieth the greater benediction, and the clearer revelation of God's favour. Yet, even in the Old Testament, if you listen to David's harp, you shall hear as many hearse-like airs as carols; and the pencil of the Holy Ghost hath laboured more in describing the afflictions of Job than the felicities of Solomon. Prosperity is not without many fears and distastes; and adversity is not without comforts and hopes. We see, in needleworks and embroideries, it is more pleasing to have a lively work upon a sad and solemn ground, than to have a dark and melancholy work upon a lightsome ground: judge, therefore, of the pleasure of the heart by the pleasure of the eye. Certainly virtue is like precious odours: most fragrant where they are incensed or crushed; for prosperity doth best discover vice, but adversity doth best discover virtue.'*

The five years of shame, poverty, and sickness, which followed Bacon's disgrace, are the brightest part of his life. He did not waste them in sorrow or in anger. He felt that 'that which is past is gone and irrevocable, and that they do but trifle with themselves who labour in past matters.' He felt that, having, as he says, wasted his best years and his best exertions in matters for which 'he was not very fit by nature, and was more unfit by the preoccupation of

* Essay on Adversity, p. 47.

his mind,'* he ought to dedicate the remainder to the improvement of mankind.

Not that Bacon was positively unfit for the worldly struggles which nearly filled his first sixty years. He was the very best debater, he was one of the best courtiers, and he was one of the best lawyers of his time. He gained every prize for which he contended — wealth, favour, rank, and power.

But he was relatively unfit. His abilities for practical life were great, but they were inferior to those of several of his contemporaries. He was not so good a lawyer as Coke, or so good a courtier as Villiers; and, above all, he wanted the masculine virtues, the courage, the firmness, and the self-denial, without which an ambitious man is a gladiator unprotected by defensive armour. The humblest and the commonest of these virtues is frugality. Bacon knew well its importance. The Essay on Expense was printed before he was forty. 'Certainly,' he says in that essay, 'if a man would keep but of even hand, his ordinary expenses ought to be but to the half of his receipts; and if he think to wax rich, but to the third part.' He estimates himself, while Attorney-General, his official income as 7,600*l.* a year,† equal at least to 40,000*l.* a year at present. He had no children; his wife was an heiress; he had a patrimonial property; yet he was always in debt, and, when he could borrow no more, had recourse to the desperate expedient of judicial corruption.

* Letter to Sir Thos. Bodley, 1605.

† Letter to the King, Feb. 12, 1615.

In the Essay on Great Place, he dwells on the necessity of binding the hands of servants; yet he allowed his own servants to plunder both the suitors in his court and himself. 'Sit down,' he said to them after his disgrace, when they rose on his approach; 'your rise has been my fall.' No man could owe more to another, than he did to Lord Essex. His benefactor was on his trial: Bacon had not the courage to refuse to act as counsel against him. Elizabeth wished to escape from the odium thrown on her by Essex's execution. She required Bacon to write a pamphlet to blacken the memory of his friend: Bacon complied.

James, with his cruel cowardice, was eager to punish, as a traitor, Peacham, whose only crime was the possession of an offensive manuscript. Bacon submitted to declare what was at most a misdemeanour to be treason; to extort, by private solicitation and intimidation, the concurrence of the judges; and to try to obtain further evidence against the prisoner, by questioning him 'before torture, in torture, between torture, and after torture.'

Bacon, during his greatness, always proclaimed his preference of study to business, of theory to practice; whether sincerely may be doubted. 'You may observe,' he says, in his Essay on Envy, 'that the more deep and sober sort of politic persons, in their greatness, are ever bemoaning themselves what a life they lead, chanting a "quanta patimur," *not that they feel it so*, but only to abate envy.'

It has often occurred to us to consider what we should

have gained, and what we should have lost, if the reversion of the registrarship of the Star Chamber had fallen to him in his youth, and he had retired on it into contemplative life.

He would have left us a much purer example, but a less useful warning. It is exquisitely mournful, but equally instructive, to see a man of gigantic intellect, of kindly affections, who had long and deeply meditated on virtue and on vice, who was carried away by no violent passions, who was borne down by no overwhelming temptations, seduced into crimes the most hateful and the most despicable — into cruelty, oppression, falsehood, ingratitude, and corruption, by mere weakness; by the want of firmness to resist the solicitations of the sovereign, or of the favourite of the sovereign; and, by the want of self-denial, to abstain from gratifying his vanity or his taste by an expense to which even his enormous income was unequal.

He would probably have completed the Instauratio Magna. Much of it no doubt would have been very valuable; much would have consisted of speculations in physical science, depending on premises deduced from insufficient evidence, or assumed without any evidence whatever. But we should not have had the Essays, such as we have them now. Only long experience of active life; only constant collision with every class of mind, and every diversity of character; only passing through every variety of fortune, from poverty to wealth, and from wealth to poverty — from obscurity to fame, and from

fame to infamy — from mediocrity to power, and from power to humiliation — could have given to him the deep and practical insight into human nature which produced the Essays in their last form. And we are not sure that we should gain, even if it were possible to exchange them for the Desiderata.

The few portions of Archbishop Whately's Annotations which we have extracted, give, of course, a most inadequate specimen of his part of the volume. It is, as we have already remarked, a work of which it is impossible to give an outline or a comprehensive view. We must refer the reader to the original: it cannot be read by deputy. It is of 'the few books that are to be read wholly, and with diligence and attention.' It is not often that such a man as Whately comments on such a man as Bacon.

LORD KING.*

[Edinburgh Review, October 1846.]

THE ingratitude of mankind towards their benefactors has long been notorious. It is not, indeed, universal. Neither Cromwell, nor Napoleon, nor O'Connell, could complain of ill-requited service. But in general it will be found that those whose merits have been promptly and adequately recognised, have been men who have participated in the opinions and the passions of those around them. They have been statesmen, or soldiers, or demagogues, whose objects have been the same with those of their contemporaries, and who have differed from them only by perceiving more clearly, or employing more unscrupulously, the readiest means of attaining them. Men of a higher moral and intellectual character — men who are unaffected by the prejudices of their age and country—who refuse to aid in gratifying irrational desires, or in maintaining irrational opinions — must not expect power or even popularity. They labour for posterity, and from posterity they must receive their reward.

* A Selection from the Speeches and Writings of the late Lord King. With an Introductory Memoir. By Earl Fortescue. 8vo. London: 1844.

But even posterity is not to be depended on. It does not, indeed, treat the memory of those to whom it owes its wisdom and its prosperity as its fathers treated their persons. It does not hate or despise, but it often neglects or forgets them. This is peculiarly the case where the services rendered have been those rather of a Teacher than of a Legislator—where they have consisted in exposing fallacies, softening prejudices, stigmatising selfishness, and preparing in one generation the way for measures which are to be adopted by another. The prophet has no honour in his own country, nor, unless he be a worker of miracles, in his own time. Some think him a visionary, others an enthusiast, and others an incendiary or an anarchist.

But his opinions gradually spread. They are first accepted by students, then by that portion of the educated classes which is not misled by politics or party, then by the mass of the people, and at length they force their way into the Legislature. The proposed reform is supported by minorities small at first, but gradually, though not regularly, increasing. At last it becomes an Open Question in the Cabinet; and then, though the mode in which it is to succeed cannot be foreseen, its final success may be predicted.

The constantly recurring inconvenience of debates in which those who sit on the Treasury Bench have to answer one another — the unceasing pressure from without, or some accident—a Clare election, a revolution in France, a financial deficiency, or a potato disease— effects the conversion of the head of the Ministry. He declares to his

colleagues that the country has too long suffered from opinions which he now finds to be absurd, and from laws which he now finds to be mischievous. He announces that the measures which he and they have spent their lives in opposing must now be carried by a united cabinet. It is seldom that any of his colleagues resist. If any do, they are ejected. The public is too much delighted with the result to criticise narrowly the means by which it has been brought about. Still less does it stop to enquire who they were who, in former times, discovered, or established, or kept alive the doctrines which are now bringing their fruit. It allows the temple to be dedicated by him who first opened it for worship and use. His name is inscribed on the pediment; his statue stands in the portico; and after ages ascribe to him a fabric which, if he had been listened to, would never have been erected. Those who invented the plan, and dug the foundations, and raised the walls, are forgotten, or remembered only by political antiquaries.

If the tract, the title of which we have prefixed to this article, had not been published, this would unquestionably have been the fate of Lord King. It may be his fate even notwithstanding that publication; and it is in the hope of averting such an injustice that we call the public attention to its contents.

Lord King was born in 1775, succeeded to his title in 1793, took his seat in the House of Lords in 1797, and appears to have spoken for the first time in 1800. From that time, until his death in 1833, he took an active part

in debate. It is not easy for a party man, and Lord King was a steadfast Whig, to be a regular debater, and always to conciliate his allegiance to party with his allegiance to truth. It is not easy when his party is in power; it is still more difficult when it is in opposition. For since a cabinet is generally far superior, both morally and intellectually, both in knowledge and in public spirit, to the mass of its supporters, its measures are seldom positively wrong. Its fault consists not so much in what it does, as in what it omits, and an undiscriminating opposition must therefore often be an opposition to what is right. We can suppose a man honestly and wisely to support the measures of a government during a whole session, and at the end to join in a vote of want of confidence; just as we can suppose a man to approve separately each act done by his servant, and yet to discharge him for gross omissions of duty. But, to do this, requires great forbearance and freedom from the party spirit which is the besetting sin of the members of a deliberative assembly.

This difficult task, however, Lord King appears to have achieved. Lord Fortescue has given us the substance of between seventy and eighty speeches, delivered during more than thirty years. During the whole of this long period, except the last two years and a half, and the brief Whig administration of 1806, Lord King was in opposition. And yet we can find no traces of faction, no deviation for a moment from the straight line of truth, either to excuse the faults, or to serve the purposes of the party with which he acted. Some mistakes, of course, there are. No man

at the close of a long public life can look back at his own conduct, and not discover in it much that experience shows to have been erroneous. But the amount of practical error into which Lord King fell is marvellously small. It is confined, indeed, to his conduct respecting the Spanish Negotiations of 1822 and 1823.

No one, we suppose, now questions the wisdom of Mr. Canning's conduct of those Negotiations. It is admitted that he boldly and decidedly separated the policy of England from that of the Holy Alliance. That to prevent the invasion of Spain by France, he interfered by argument and by advice—remonstrated, in short, by every means short of actual menace. That to employ menace, without intending to support it by war, would have been degrading, and to engage in war when no important British interests were affected, unjustifiable. Lord King, however, supported Lord Ellenborough's motion for an Address to the Crown—declaring that the honour and interest of the nation had not been supported in the Negotiation, and expressing an opinion that more decided measures might have prevented the invasion. He said, 'that he had read the papers on the table with shame, grief, and disappointment; that he could not find in them one honest or manly sentiment, one opinion suited to the occasion, one declaration becoming candid or upright statesmen. He denied even that this forbearance was to be imputed to prudence. It was apathy and indifference to the cause of Spain and

of liberty. To find a parallel, their Lordships must go back to the times of the Stuarts.' *

But though we now see that all this was unjust as criticism, and that conduct bottomed on such feelings would have been most mischievous, instead of wondering that Lord King should, on one occasion, have been guilty of mistake, we honour his memory when we recollect that the mistake was a single one, and arose from honest indignation at one of the most revolting incidents in the long and calamitous history of the oppression of Spain by France.

It must be admitted, however, that, during a considerable portion of Lord King's political life, to carry on honestly a systematic opposition was much easier than it has since been, or than it had been for many years before. The Percival administration, and that of Lord Liverpool, until it was somewhat liberalised by the death of Lord Londonderry and by the preponderance of Mr. Canning, were the two worst governments which this country has endured during the last sixty years. It was the period of Lord Eldon's ascendancy, and bears the mark of his uncultivated intellect;—his narrow sympathies, his restless jealousy, his fierce prejudices, his general ignorance of the causes on which the welfare of the Empire depended, and his indifference to that welfare even in the few cases in which he could understand the means by which it might have been promoted.

* P. 321.

Administrations in which such a spirit was predominant were naturally administrations of delay, inaction, and repression. Their object was to keep the country stationary, to support bribery in the boroughs, and intimidation in the counties, to keep the Catholic degraded, and the Negro enslaved; to restrict our commerce, or misdirect our industry; to support corruption by patronage, patronage by large establishments, and large establishments by grinding taxation; and to make that very taxation a plea for prohibitory duties on the necessaries of life. When misgovernment produced distress, and distress discontent, they applied their remedies, not to the disease, but to the symptoms; they tried not to remove disaffection, but to repress its expression; they prosecuted the Press; they let loose the Yeomanry on public meetings; and suspended the Habeas Corpus.

It is much to be regretted that Lord King, in his carelessness of fame, should have preserved none of the speeches by which he opposed these weak and unscrupulous administrations. Lord Fortescue has gleaned a few of them from Hansard, but in their abridged, ill-connected form, they are mere memoranda, from which the opinions of the speaker may be inferred, but his powers cannot even be estimated.

It is not, however, to the general parliamentary conduct of Lord King that we direct the reader's special attention. The merit of having been an intelligent, bold, and unwearied opponent of misgovernment, he shared

with several others. His peculiar claim to our gratitude arises from his conduct on occasions on which he stood prominent, and nearly alone; from his management of subjects as to which he was in advance of public opinion, where he had to teach doctrines now indeed familiar, but then generally denied, even by the few who endeavoured to comprehend them; and to recommend measures which have passed into our legislation, but which, when first proposed by him, were rejected as revolutionary extravagances.

The three subjects to which we allude are, 1. The Restoration of the Currency; 2. The Commutation of Tithes; and, 3. The Abolition of the Corn Laws.

From the time at which our acquaintance with the civilised world begins, until the seventeenth century, it has been the usual policy of governments to retain in their own hands the Coining of Money. To ascertain the fineness of a piece of metal is a troublesome and expensive process. It cannot therefore pass from hand to hand with the rapidity which the functions of money require, unless it carry some stamp in which the public confides, denoting its quality; and it seems to have been generally supposed that none but a government could be intrusted with the affixing such a stamp. As population and wealth and intercourse increased, as men became known to one another, and public opinion made fidelity to engagements a commercial point of honour, it was found that a promise to pay a sum of money on demand, signed by a person in good credit, is of the same value as

the money, and for some purposes more convenient. And it was also found that this convenience enables such promises to circulate as money for a considerable time—sometimes two or three years, before some holder requires the promise to be performed. The maker of such a promise, or, as it is usually termed, Note, is a borrower who pays no interest; and by employing the fund in return for which it was issued, he may make a profit proportioned to the average amount of his Notes in circulation.

It is difficult to perceive the grounds on which governments, which so jealously reserve to themselves the privilege of coining Metallic Money, should so frequently and so easily have allowed subjects to coin Paper Money. It is often as difficult to ascertain the value of a Note as that of a sovereign. Indeed, much more so, since the senses give no assistance. Paper money may be issued in excess, which can scarcely be the case as to metallic money, and that excess may be very mischievous. And as its issue is profitable, while coining metallic money is generally a loss, there is always a danger that it will be so issued. But notwithstanding these *à priori* grounds for expecting the contrary, most governments have allowed their subjects, or certain portions of their subjects, to issue notes with little restraint or even superintendence. No European government has done this more freely than the British. It has gone, indeed, far beyond mere permission. It has relieved the issuers of notes from individual responsibility, by creating in all

the three kingdoms incorporated or Chartered Banks, in which only the funds of the institution are liable to its engagements. At the time when Lord King entered public life, the two principal of these institutions, the Bank of England and the Bank of Ireland, had each received a more extraordinary favour from the government. Each had been forbidden to perform its promise to pay its notes in metallic money, or, as it is called, cash.

The question, whether the first restriction of the Bank of England was or was not justifiable, must be admitted even now, with all the lights afforded to us by experience and by discussion, to be one of considerable difficulty. If that restriction had been imposed merely to save the Bank from the consequences of its own imprudence — or merely for the purpose of enabling it more easily to make advances to the government; or if Mr. Pitt had foreseen the length of the period for which it was to endure, the mischiefs that it would occasion during its continuance, the ruin that might accompany its termination, or the lasting burdens that it would entail — no reproach would be too severe for his misconduct. But its object was to meet a sudden emergency, a contraction occasioned by the hoarding of specie, by the fears of immediate invasion, by large subsidies to foreign powers, and by the distress and want of confidence produced by a war, expensive and dangerous beyond all experience, which our habits were not yet formed to sustain, and which our leaders had not yet learned to conduct.

We are inclined to believe that, as far as the Bank of England was concerned, the error was not the imposition of the restriction, but its continuance. And even that continuance was during its first seven years, in fact during the remainder of Mr. Pitt's life, dangerous rather than mischievous. Its dangers can scarcely be exaggerated. It enabled the Bank directors to change at their pleasure the standard of value of the country; and made it their interest, both as individuals and as the governors of their corporation, to do so. They might have doubled or quadrupled, or much more than quadrupled, their discounts, by charging a rate somewhat below the average rate of interest; and by confining, as in fact was their practice, their discounts to bills not having more than sixty-one, or at most ninety, days to run, they might have avoided the possibility of ever having to pay in gold the notes thus issued. Since, by ceasing to discount within three months of the time at which cash payments were to be resumed, their notes would be sure to come back to them, before that period, in discharge of the discounted bills. The whole interest would have been pure gain; and we now know that those who then managed the Bank were unaware of the evils which such a conduct must have produced.

In the remarkable examination of Mr. Whitmore and Mr. Pearse, the Governor and Deputy-Governor of the Bank, before the Bullion Committee in 1810, they admitted that, in deciding as to the amount which they should issue, they never adverted to the value of their

notes in the precious metals; they affirmed that 'the price of bullion, or the state of the foreign exchanges, could never be a reason for lessening the amount of notes to be issued.'* They affirmed that bank-notes could never be in excess, provided they were issued by discounting bills drawn by a real purchaser in favour of a real seller, 'since no one would pay interest for a note they did not want to make use of.' † They were asked, 'Would the same security against any excess of issue exist, if the rate of discount were reduced from five to four per cent.?' and they answered, 'The security would be precisely the same.' 'If it was reduced to three per cent.?' and they answered, 'There would be no difference.' ‡

We now know that the demands of commerce for loans and discounts at a rate below the usual rate are insatiable. When the rate of interest is five per cent., the man who can borrow at four makes a profit proportioned to the sum which he borrows. With a metallic money, or with a paper money payable in metallic money, such transactions do not add to the amount of the currency, though they may enable it to circulate more rapidly; but an inconvertible paper currency may thus be increased without limit. We believe that the conduct of the Bank of England is a solitary instance of any approach to moderation in the exercise of such a power.§ The French government

* App. p. 97. † P. 97. ‡ P. 98.

§ The Bank of France has since behaved with far greater moderation. Though the Provisional Government of 1848 made its paper a legal tender, it was never depreciated.

gave such a power to Law's Bank in February 1720. By the beginning of May, they had issued notes of the nominal value of about 1,200,000,000*l.* sterling, and 100 livres in paper were worth about one in silver. The French government itself assumed such a power in 1790. In 1796, they had issued 45,579,000,000 francs — nominally about 1,823,160,000*l.* sterling; and 100 francs, nominally 4*l.*, were worth about five sous, or less than three pence sterling. The paper money of the Danish government exchanged, in 1813, at the rate of one dollar in silver for 1,600 in paper. In Austria, in 1810, a silver florin was worth thirteen in government paper.

While the interest of the Bank of England tempted it to pursue the same course, the mercantile public were also urging it on. The merchants of London, at a meeting held on the 16th of March 1797, almost immediately after the passing of the Restriction Bill, resolved,—'That it is the opinion of this meeting, that the accommodation afforded to the trade of the kingdom by the Bank of England, in discount of bills and notes, has been found very inadequate to the present extended commerce of the country. That it is the opinion of this meeting, that, without an extension of the circulating medium of the kingdom, by discount of mercantile bills and notes, the general commerce of the country will be exposed to the most serious, immediate, and alarming evils. That it is the opinion of this meeting, that the recent mark of confidence reposed in the Bank of England, by the respectable associations formed for receiving their notes, notwithstanding the Order of Council

of the 26th of February, has given the merchants and traders a fair claim to reasonable and necessary accommodation.'

At a subsequent meeting, on the 24th of March 1797, they resolved,—'That it is the opinion of this meeting, founded on their own individual experience, and confirmed by fair and obvious reasoning upon commercial principles, that there is at all times, at the least, two months' supply of export and import merchandise in the custody of the merchants and traders. That it is the opinion of this meeting, that an accommodation, by discount, to the value of such proportion of the export and import trade, is both reasonable and necessary, and may be afforded without risk to those who discount bills of exchange representing and secured by such property in the hands of the merchants and traders.'

It appears from the evidence of Mr. Lushington, the chairman of the meeting, taken by the Committee of Secresy, in 1797, that these resolutions produced merely promises of increased accommodation, as soon as the Government should have materially diminished its debt to the Bank. The merchants, therefore, had a further meeting, on the 31st of March 1797, in which they resolved,—'That, although well satisfied with the sentiments declared by the Bank directors, they are of opinion that it is important to the mercantile interest of the country, not on the ground of individual accommodation, but upon admitted public principles, that the practice of discounts should be extended to and continued upon the

scale stated in the resolutions of the 24th of March; and that, therefore, if the Bank of England be incompetent to afford this necessary and reasonable aid, it will be requisite that some other public establishment should be created to supply the deficiency.'*

Lord King's first speech on the Restriction Act appears to have been made on the 22nd of February 1803. His 'Thoughts on the Effects of the Bank Restrictions' are dated the 20th of May 1803. When this publication appeared, we had not had the Report of the Bullion Committee—we had not had Mr Ricardo's Pamphlets—the subject had not been considered year after year in and out of Parliament by the ablest men, theoretically and practically, in the kingdom—and, above all, we had not had the experience of the sixteen years which followed. The circulation of the Bank averaged sixteen millions, the price of gold was 4*l.* per ounce, that of silver from 5s. 7d. to 5s. 8d.; and the exchange in Hamburg varied between 36. 3. and 35. 4.; that on Paris between 25. 10. and 25. 2. The rate of interest was stationary; we had passed from war to peace, and from peace to war, without any great commercial or monetary crisis. It required great sagacity to perceive, through so tranquil a surface, the ultimate tendencies of a law which seemed to work beneficially. Lord King's Essay appreciates so justly the half-hidden dangers which surrounded the path which we were treading, that it might be supposed to have been written

* App., No. 18, to the Third Report of the Committee of Secresy, 1797.

in 1814 instead of 1803. It contains so full, and in the main so true, an exposition of the Theory of Paper Money, that after more than forty years of discussion there is little to add to it, or to correct.

As it is the most important of his works, we will examine it rather more fully than its length may at first sight seem to warrant.

Lord King begins by fully admitting the advantages of a convertible paper currency. Perhaps he rather exaggerates them, or at least under-rates the disadvantages.

'It is,' he says, 'one of the most usual objections to such a currency, that by introducing a new quantity of the circulating medium, it occasions a depreciation of money, and a consequent advance of prices; whilst, on the other hand, writers of great authority, and among them Dr. Adam Smith, have asserted, that as each portion of paper displaces an equal quantity of coin, the value of the precious metals is not affected. This opinion, though much nearer the truth than the former, and though it may be considered as true for all practical purposes, is not, however, a correct representation of the fact.

'The metals, which by consent of mankind are used as the representatives of value, are employed either in manufactures, or as current coin, or in the form of bullion, for effecting the exchanges between nations; and their value will consequently depend upon the degree in which the supply for these different purposes is proportioned to the demand. It must rise or fall as the demand in each particular instance is increased or dimin-

ished. If, for example, by any change in the manners and customs of Europe, the use of gold and silver plate should be entirely laid aside, the value of those metals must, of course, be greatly reduced. The substitution of paper for specie is a fact of the same nature, and has a similar influence on prices. So far as it displaces the coin which would otherwise be employed, it diminishes the demand for those metals for the purposes of coinage, and has precisely the same effect in reducing their general value as an actual increase of quantity to the same amount.

'On the supposition, therefore, of the whole quantity of gold and silver remaining the same, they must, in a certain degree, be rendered cheap by every increase of paper currency. But as these metals are in universal request, and circulate more generally than any other articles of commerce, the effect thus produced cannot be partial, but must extend to all other countries; and it will therefore follow, that the actual reduction in the value of gold and silver which is produced by the paper circulation of any particular country, is in the proportion of the amount of such circulation to the whole quantity of the precious metals applicable to the purposes of coinage and commerce throughout the world. It is probable that this proportion can never be very great, and experience seems to show, that no considerable depreciation is ever produced in this manner. Previous to the Revolution in France, the currency of that extensive country was carried on almost entirely in silver; and the

rapid emission of assignats, which was the consequence of that event, must have very suddenly withdrawn a considerable quantity of that metal from circulation. Yet this violent operation does not appear to have produced any perceptible effect upon prices, or even upon the value of silver in Europe. The extension of paper credit which takes place in common times, and under ordinary circumstances, can only produce a very gradual depreciation, which, being shared by the world at large, is not felt as an inconvenience by any particular country.' *

This is perfectly true as to the ultimate effects of a Paper Currency. The gold and silver which it displaces are added to the general stock of the world. The two metals which, next to iron, are the most useful, become less rare, and a silver fork, or a gold watch, may be obtained with less labour than before. Even the general rise of prices which accompanies the progress of the change is, on the whole, beneficial. It is necessarily very slow. Lord King has well illustrated this by the example of the slight effect produced by the vast amount of specie thrown into Europe by the French Revolution. And a slow but permanent rise of prices, like that which the supply of gold from Russia seems now to be occasioning, gives activity to all producers and dealers, without materially inconveniencing those whose monied incomes are fixed. The world in general, therefore, is a gainer, by the substitution in any particular country of paper for a

* P. 55.

portion of the coin which it previously employed. And that country itself gains by saving the wear and loss of coin, and the interest on a portion of its capital, which, though eminently useful, was not directly productive.

But while the progress of substitution is going on—unless it be so gradual as scarcely to be perceptible, unless it be so slow as to act rather by preventing the precious metals from coming in than by driving them out—the country which is effecting that substitution must suffer. It is only by means of a general depreciation of its whole currency that it can occasion a portion of it to be exported. The expense and risk of exporting coin, especially silver, are considerable. Until the exchange is unfavourable to a country, in an amount which will pay this expense and risk, and afford a profit, no coin can be exported. The coin and the newly introduced paper must for a time circulate together. The increase of the quantity of the currency, without an additional demand, must depress its value, or, in other words, the price of labour and of materials rises. The cost of production, therefore, of native commodities is increased; and as foreign prices have not increased, they cease to be remunerative. At the same time it becomes profitable to import some foreign articles which previously could be produced more cheaply at home. Exports diminish, and imports increase. The exchange falls until metallic money can be profitably exported. This export goes on until the gradual diminution of the currency restores its value, or, in other words, reduces prices to their natural level. It is then, but not before,

that the transaction becomes beneficial. During the interval there is commercial derangement — probably ill-founded speculation at one time, and at another ill-founded depression. While prices are rising, operations are begun, and perhaps completed, and engagements contracted, which can succeed, or be performed, only on the supposition that the rise will increase, or at least be permanent. While prices are falling, undertakings, however judicious, of which the returns are slow, and which require, therefore, immediate support, are in danger of being abandoned, in consequence of the general want of confidence, and therefore of the credit which depends on confidence. And those of which the returns are quick may become ruinous, since the money returned may often be less than the money advanced.

Lord King then lays down, that a Paper Currency can be kept at a value equal to that of the coin which it represents, only 'by being immediately convertible into specie at the option of the holder.'

Theoretically, it seems that any currency, however intrinsically valueless, may be kept at its nominal value by being received in payment of taxes, and limited to the amount required by the public; and that that amount may be ascertained by watching the foreign exchanges, and diminishing the quantity issued, the instant it falls below the value of its supposed foreign equivalents. But this duty has never been perseveringly performed by a government or by an individual. The power to issue inconvertible paper has never been granted or assumed without

being sooner or later abused.* The same temptations to over-issue do not exist with respect to a subsidiary currency, which is not a legal tender, except for very small sums. The silver currency of the British islands is inconvertible, and is worth less than the silver which it represents. As, however, a small over-issue would not be profitable, and a large one would be refused by the public, it is kept within its proper limit. But, as respects the main currency of a country, Lord King's principle is practically and at the long run true.

He then relates the circumstances which led to the violation of this principle by the Restriction Act, and proceeds to state his grounds for believing that the inconvertible currency created by the Act was then actually depreciated, and that, on the principles of action adopted by the Bank, a further depreciation was to be expected.

He begins by noticing an *à priori* objection, namely, that the additional issue of bank-notes, then not exceeding five millions, was an addition which, even supposing all the coin to be still current, the augmented wealth and commerce of the country required. His answer contains some statements and some hints, on an obscure and important branch of Political Economy, which even now deserve attention, and then were original.

'It is clear,' he says, 'that the opinion that an augmented trade requires an augmented currency, proceeds

* The case of the Bank of France in 1848 is, as I remarked in a previous note, an exception. But the inconvertibility of its notes lasted for only a very short time.

entirely upon a supposition which, though in itself very plausible, and countenanced by several writers on political economy, appears to have no foundation in fact. The argument assumes that there is in all cases some given proportion between the wealth and industry of a society and the amount of its currency, and that this proportion is capable of being known and ascertained. It is upon the ground of these assumptions that estimates have been formed of the proportion which the circulating money of any country bears to the whole value of the annual produce circulated, which has been computed by different authors at a fifth, a tenth, a twentieth, and a thirtieth part of that value.* Without enquiring into the particular grounds of calculations which differ so widely from each other, it must be admitted that the amount of bank-notes now in circulation bears a very small proportion to the circulating wealth of Great Britain; and that it would be highly probable, on the principles of the above theory, that the directors, in their issues of notes since the restriction, have not exceeded the proper limits.

'But it will be found, on an attentive consideration of the subject, that the supposition of a given *ratio* in all cases between currency and commerce is in itself altogether erroneous; and that there is no rule or standard by which the due quantity of circulating medium in any country can be ascertained, except the actual demand of the public. The requisite proportion of currency, like that of every

* Wealth of Nations, vol. i. p. 441.

other article of use or consumption, regulates itself entirely by this demand, which differs materially in different countries and states of society, and even in the same country at different times. It seems at first sight, from the greater number and amount of exchanges which take place in such a state of society, that a rich and commercial nation would require a much larger proportional quantity of the circulating medium than a country distinguished by its poverty and idleness. Yet the contrary of this is probably the fact. Superior wealth and trade are causes which operate in themselves to increase the demand for currency; but they may be more than counterbalanced by other circumstances. Commercial nations have in this respect a great advantage over others, by the more skilful and judicious management of their currency. The first step in the improved system of circulation is the establishment of banks, which diminish the quantity of current coin or paper, by rendering it unnecessary for individuals to retain large sums for their constant use. A further improvement takes place in the extensive use of bills of exchange and promissory-notes, and of the drafts of bankers payable on demand, by means of which currency is economised in perhaps a still greater degree, and a small portion is made to perform the office of a much larger. Notwithstanding the superior riches and industry of England, there can be no doubt that its circulating medium, in consequence of these improvements, is much less in proportion to its wealth and commerce than that of France, which, prior to the Revolution, was computed

by M. Necker at ninety millions sterling. No commercial writer has ever estimated the circulation of England at any sum approaching to this amount.

'Even in the same country, the quantity of circulating medium required for commercial purposes is liable to great fluctuations, and is very different at different periods. During a season of prosperity and confidence, the demand for currency, whether consisting of coin or paper, is much diminished by the facility of obtaining credit. The contrary effect takes place in times of alarm and insecurity, which produce unexpected calls for payment, and put all commercial persons under the necessity of increasing their stock of currency as a provision against contingencies.

'It is manifest for these reasons that the proportion of circulating medium required, in any given state of wealth and industry, is not a fixed but a fluctuating and uncertain quantity, which depends in each case upon a great variety of circumstances, and which is diminished or increased by the greater or less degree of security, of enterprise, and of commercial improvement. The causes which influence the demand are evidently too complicated to admit of the quantity being ascertained by previous computation, or by any process of theory.'*

Having disposed of this preliminary objection, Lord King proceeds to state his reasons for affirming the existence of a depreciation. These are — the Price of Bullion and the Foreign Exchanges.

The argument founded on the price of bullion is the

* P. 65.

least satisfactory part of the work. In the first place, he takes the price of silver, instead of gold, as the test of depreciation; but silver is not the English standard. When Lord King wrote, it could be legally tendered only in payment of sums under 25*l.*; and in fact it never was so abundant as to be employed, except as small change. To state that the Mint price of silver was 5*s.* 2*d.*, and the market price was 5*s.* 7*d.*, was merely to state that the relative values of silver and gold had altered since they were assumed by the Mint. A rise in the price of gold bullion might have been really important; but Lord King does not seem to have perceived, or, if he perceived, he has not clearly stated, that when we speak of the value of the metal which is itself the standard of value, we, in general, merely express the number and weight of the pieces into which a given quantity of it is coined. When we say that gold sells for 3*l.* 17*s.* 10½*d.* an ounce, we do not mean that it sells for that amount of gold, of silver, and of copper, but that in return for forty pounds of gold the Mint gives 1,869 pieces of equal fineness, weighing also forty pounds; or, in other words, that forty pounds of gold are coined into 1,869 sovereigns.

This is the state of things when coin and bullion are equally exportable by law — when the coin is of full weight, and the Mint charges nothing for coinage. Coin and bullion must then be of precisely equal value, and cannot measure one another. We might as well talk of the weight of water in water, or of the value of lead in lead, as of the price of gold in gold. Were an ounce of

gold to fall one-tenth of its present cost of production, or to cost ten times as much labour as it does now, still, while the regulations of the Mint are unaltered, it will be worth 3*l.* 17*s.* 10½*d.*

Of course, laws may be enacted by which coined money may be made more or less valuable than bullion. If the Mint demand a seignorage, it may be more valuable. If it be forbidden to melt or export it, it may be less valuable. This was the law in 1803, and had been so for centuries before. Whenever, therefore, the exchanges were against us sufficiently to allow the export of specie, bullion became rather more valuable than coin. In 1810, the difference was about 4*s.* per ounce.* The market price of exportable gold was 90*s.* per ounce, and that of gold the product of British coin, and therefore not exportable, 86*s.* In May 1803, and for more than a year before and a year after, no prices of gold are returned by the Mint; but on the 13th of April 1804, the first quotation which occurs after the date of Lord King's publication, when the Notes of the Bank of England amounted to 17,494,640, the price of foreign, and therefore exportable, gold was 4*l.* per ounce, and does not appear to have risen above that price for several years. Now, as the difference between 4*l.* and 3*l.* 17*s.* 10½*d.* is less than the difference between the value of exportable and non-exportable gold, we are inclined to consider the price of gold between 1804 and 1808 as evidence rather against than in favour of depreciation.

We now come to Lord King's other ground for affirming

* See Mr. Binn's Evidence, p. 45, Appendix to Bullion Report.

an existing depreciation — the state of the Foreign Exchanges. The second edition of his work is dated the 20th of March, 1804; the exchange on Hamburg was then 35. 4.; that on Paris was 25. 2. Now, these rates deviate so little from par, that they offer in themselves no evidence of depreciation.*

Lord King, therefore, was forced to argue, that unless our currency were depreciated, the exchanges between England and the Continent must be in our favour, and that their being so low as par, therefore, was evidence of depreciation.

'On considering,' he says, 'the whole of the great commercial system which is carried on by Great Britain with every part of the globe, it will appear that there are circumstances essential to the existence of that commerce, which involve the necessity of maintaining a favourable balance with the Continent of Europe. The great trade with the East Indies enjoyed by this country, almost to the total exclusion of the rest of Europe, creates a vast annual demand for silver, which must be supplied by those countries where silver is produced, or by those to which it is forced by colonial laws and restrictions. The exportation of silver is the most lucrative branch of the Indian commerce, because it is the commodity which, with the smallest cost in Europe, will purchase the greatest quantity of labour in China and the East Indies. It is the extraordinary profit attending this branch of export trade

* The Bullion Committee estimated the par between London and Hamburg on 34. 3½. Report, p. 10.

which constitutes the principal advantage of a commercial intercourse with those countries, and which must have chiefly contributed to enrich the nations which have successfully enjoyed this commerce.

'It is, therefore, a necessary part of the system of that country which possesses the greatest share of this branch of trade to draw from the rest of the Western world that supply of the precious metals which is annually consigned to the East. The direct commerce with Spain and Portugal, the countries immediately connected with the American mines, is inadequate to this purpose, because those nations have not a sufficient demand for the manufactures of Great Britain; and recourse must therefore be had to the different nations of the Continent, among whom the annual produce of the mines is distributed by the commercial intercourse of Spain and Portugal with the other parts of Europe. It is the immediate consequence of this demand to produce a balance of trade and a favourable exchange with the Continent, which must necessarily continue till the equilibrium of the precious metals is restored between the East and West, and till silver shall no longer represent a greater quantity of exchangeable commodities in India than in Europe.

'So long as Great Britain continues to be the greatest manufacturing country in Europe, and to enjoy the monopoly of the Indian trade, the balance must continue in her favour with the Continent, unless some great revolution should remove the restraints on the commerce of the Spanish colonies in America. If that event should ever take

place, and a direct intercourse should be established by Great Britain with Peru and Mexico, the balance of trade will be brought to a level, and the average state of the exchange will be at par between England and the continent of Europe. But with the continent of America the exchange will then be as much in our favour as the whole amount of the expense of conveying the precious metals from thence to this country.'*

The passage which we have just quoted occasioned a controversy between Lord King and the 'Edinburgh Review.' The Article upon his Tract, which appeared in the number for July 1803, maintained, that the exportation or importation of bullion will not affect the exchange in a different way from the exportation or importation of any other commodity.

'The state of exchange,' it said, 'between two countries, does not depend upon the bullion trade, more than upon that of any other commodity; it depends entirely on the balance of debts. Provided the whole exports are no more than equal, during a given period of time, to the whole imports, the exchange will be at par, although a great part, the greater part, or even the whole, of those imports may have consisted of bullion. Let it be supposed, for example, that the commerce between Britain and Portugal had consisted wholly of woollen cloths exported from Britain, and of nothing but bullion directly imported from Portugal, provided the whole quantity of woollen cloth exported was no more than equal in value,

* P. 89.

annually, to the whole quantity of bullion imported, and that the reciprocal purchases were made upon the same terms, in respect of the length of credit, the real exchange would have remained steadily at par, though we imported nothing but bullion; and if, on the other hand, our import of bullion had exceeded our export of woollen cloth, or if the Portuguese merchant had granted a more indulgent credit than he received from Britain, the course of exchange would then have been permanently against this country, although we imported nothing but bullion. The real difference of exchange in our favour, and which therefore indicated a balance of debts in our favour, was owing to that credit which the merchants of England are enabled by their great capitals and skill to extend to the traders of almost all foreign countries.'*

Lord King answered in an Appendix to the second edition of his Tract. To the argument, that the real difference of exchange in our favour was owing to our habit of giving long credits, he replied that—

'The credit which is given by the English merchants occasions a small advance on the price of the goods, and therefore increases the value of the exports. But such an increase, when regular and uniform, is always paid for by an additional amount of imports, and cannot, upon any intelligible principles, permanently affect the exchange. Long credit is always given by a rich country, where the rate of interest and profits of trade are low, to a poor country, where they are very high. The goods are sold at

* Edinburgh Review, vol. ii. p. 219.

an advanced price, it being an accommodation to the poorer nation to pay an advance of perhaps ten per cent. on a whole year's credit, rather than a smaller sum at a shorter date, because the merchants of the latter country, in consequence of the high profits of trade, can employ their capital to greater advantage.'

To the statement, that the export or import of bullion cannot affect the exchange in a different way from the export or import of any other commodity, he answered, first, that the export and import of bullion is a peculiar trade; in which only a few persons in each country, and those making it their exclusive business, engage; and secondly, that bullion differs from all other commodities in this respect — that it will anywhere pay a debt, which other goods will not.

On the first point Lord King's answer was complete. The rate of exchange is influenced, not by the state of credit between two places, but by the amount of money which at that instant is passing from one to another. Long credit shows itself, as Lord King has well remarked, not in the exchange but in price. On the second point, his *reasoning* is not conclusive. There is no connection between his premises and his conclusion, that bullion cannot pass unless the exchange be unfavourable to the country which exports it. That conclusion, however, is true; but Lord King, though he perceived its truth, did not clearly see why it is true. This we will endeavour to explain.

The peculiarity of bullion is, that it is a commodity in which every person in every civilised nation deals. Whenever

two nations have commercial relations, some of the inhabitants of each have at the same time to send money to some of the inhabitants of the other. This exists with respect to no other commodity. In a state of perfect commercial freedom, persons in London might sometimes wish to export wheat to Paris, and persons in Paris wheat to London, but these transactions could not be going on simultaneously. Macclesfield is now sending silks to Paris, and Lyons silks to London, but they are silks of different kinds. But there is not a day in the year in which it does not happen that many thousand persons in London wish to send gold to Paris, and many thousand persons in Paris wish to send gold to London; the gold being in each case one identical commodity. Of course, it is convenient for both parties to save this double transmission; and the commodity being in all cases the same, the saving is effected by the London debtor paying the London creditor, and the Parisian debtor the Parisian creditor. If the sums to be transmitted from each side are equal, no money need actually pass, and the exchange therefore is at par. Under such a state of things a given amount of money in each country is, as respects the other, of precisely the same value, and possesses therefore a sort of ubiquity. A man whose money is in Paris may purchase with it a London house as easily as if his money were in London.

Now this, we repeat, is a state of things peculiar to money. Every other commodity has a peculiar local value. It rises or falls the instant that it is moved. It

moves, therefore, always in the same direction, from its place of production where it is cheapest, to its place of consumption where it is dearest. London never owes wheat to Dantzig, or deals to Memel: but it always owes gold or silver to every country in Europe, and every country in Europe owes gold to London. This state of things—a state, we repeat, peculiar to the precious metals, and belonging to them only because they serve as money—enables the exchange between two countries, whose debts immediately payable are precisely equal, to be at par; and while it is at par, no bullion can be transmitted from the one to the other, since the whole cost of its transmission would be a pure loss. The instant the debts immediately payable from one country to another exceed its credits on that country, the exchange becomes unfavourable to the indebted country, and immediately, as between those two countries, bullion loses its ubiquity. It falls into the general bulk of commodities, and acquires a local value—that is to say, it becomes of more value in the creditor than in the debtor country—and then, and then only, it can be sent from the one to the other.

The case put by the reviewer of England sending nothing but woollens to Portugal, and Portugal nothing but gold to England, and yet the credits between the two countries being equal, and the exchange at par, is, in fact, an impossible supposition. The exchange being at par—that is to say, the value of gold being no greater in England than in Portugal—every Portuguese exporter

of gold would lose the whole cost of the transaction. The real state of trade and of exchange between the two countries would be this: The importation of woollens would bring Portugal into debt to England; the exchange would be unfavourable to her, and she must pay the debt in gold. The transmission of that gold would make the credits equal; but the next importation of woollens would again bring her into debt; and, if the trade were active, she would in fact be always in debt, and always exporting gold. The relation between the two countries would resemble that which generally exists between a landlord and tenant in Ireland. The tenant is always paying to his landlord, but as he does not pay one half-year's rent till another has become due, he is always in debt to him.

It may be supposed, however, that such a trade, if extensive, could not be permanent, since the accumulation of money in the country exporting manufactures, and its abstraction from the country exporting gold, would so raise prices in the former, and sink them in the latter, as to stop their commercial intercourse. And this would be true, unless we suppose the exporting country to have its supply of gold constantly replenished, and the importing country to have a constant drain for its surplus. Lord King had the merit of perceiving that, when he wrote, this was actually the case, England being commercially interposed between the continents of Europe and Asia, and receiving bullion from Europe to be transmitted to Asia. And he had the merit of predicting, that this state

of things must cease to be permanent, as respects Europe, as soon as we established a direct intercourse with the mining countries of America, instead of receiving their produce from Europe—a prediction which has been since accomplished.

But though Lord King's general views were sound, and in some respects original, the inference which he drew, in the case before him, was manifestly unwarranted. The reader will recollect, that, when he wrote, the exchange on Hamburg was 35. 4., and on Paris 25. 2. But 25. 2. was higher than it had ever been since the autumn of 1780, and 35. 4. was higher than that of 1792, which was below 33. As there could have been no depreciation before the Restriction Act, the comparison of the exchanges of 1804 with those of 1791, 1792, and 1795, though it may not exclude the possibility of depreciation, is certainly unfavourable to it.

The last evidence of depreciation mentioned by Lord King, is 'the general increase of prices, and diminution of the value of money.'* He does not dwell on it, but rather alludes to it as a well-known fact, than as a premise requiring to be proved. Many commodities must at that time have risen in price, if our currency had continued metallic. Some, in consequence of their having been made the subjects of specific taxation, others from the interruption of commerce diminishing the supply, and others from the wants of war, or of preparation for war, increasing the demand. Such a rise, however, would have

* Page 127.

been partial. On the other hand, a rise of price, occasioned by a depreciation of the currency, must of course have been general: it must have added a percentage to all the other causes of price. At the time of which we are speaking, many important commodities were *below* their average price. Wheat, for instance, was, —

	s.	d.
January 1, 1803	57	1
July 1, 1803	60	4
January 1, 1804	52	3
July 1, 1804	52	1

We copy from the second column of Mr. Tooke's Table of prices, (vol. ii. p. 397,) the following prices in 1796, 1803, and 1804, of some other important commodities of British production, or from British colonies:—

	1796.			1803.			1804.		
	£	s.	d.	£	s.	d.	£	s.	d.
Coffee, per cwt.	5	18	0	4	12	0	7	16	0
Cotton Wool, per lb.	0	1	9	0	1	4	0	1	0
Hops, per cwt.	4	4	0	10	5	0	5	10	0
Indigo, per lb.	9	6	11	9	0	10	9	6	11
Iron, per ton	5	0	0	5	10	0	7	0	0
Butter (Waterford), per cwt.	3	14	0	4	5	0	3	15	0
Silk, per lb.	0	6	0	0	12	0	0	3	0
Spices, per lb.	0	12	0	0	4	6	0	4	6
Pepper, per lb.	0	1	1½	0	1	0	0	0	9½
Sugar, per cwt.	3	1	0	2	0	0	1	18	0
Whalebone, per ton	7	10	0	uncertain			1	10	0
Logwood, per ton	11	0	0	11	0	0	24	0	0

The reader will suspect, from all that we have said, that we do not admit the generally received doctrine of a depreciation of British currency, coexistent with the whole period of the restriction of cash payments. We

believe, with Mr. Tooke, that depreciation did not begin until the latter part of the year 1808.

The merits of Lord King's work are, that he early perceived the *tendency* of the Restriction Act. That he saw the inadequacy of the limits which the Bank Directors assigned to their issues. That he urged, with a force and a clearness which have not been surpassed, the necessity of returning to cash payments; and that he based his practical recommendations on theories generally sound, and frequently original; and that he did this at the age of twenty-eight. Its defects are, that he was too ready to believe that what was probable must also be true. That, finding that certain effects were likely to be produced, he inferred, on insufficient evidence, that they had been already produced. In short, that he turned what ought to have been merely a prophecy, and, as a prophecy, was an instance of great sagacity, into a positive statement.

As we cannot explain the moderation of the Bank during the first five years of the restriction, by imputing to its Directors a knowledge of the principles by which their issues ought to have been regulated, we think that Mr. Tooke's explanation must be adopted; namely, that they adhered to the routine of their establishment, and, that that routine accidentally preserved them from the conduct to which they were exposed, by their neglect of the foreign exchanges and of the price of bullion.

This routine was to discount at five per cent first-rate bills, having a short period to run, and founded, as we have seen, on a real transaction. But on such bills, five

per cent. discount was a very high rate of interest. In ordinary times, they may be discounted at three, or two and a-half, or even two per cent. The public, therefore, did, in the words of the Directors, control the issues of the Bank. On the terms imposed by the Bank, it did not ask for more than the Bank could supply, without materially affecting the value of its notes.

The fate of the Bank of Ireland affords an instructive illustration. In the blind spirit of imitation in which English laws are often imported into Ireland, an Irish Restriction Act followed immediately the English Act. It was preceded by no enquiry into the circumstances of the country; indeed, if any such enquiry had been made, the Act could scarcely have been passed; the exchange between England and Ireland had long been, and then was, steadily in favour of Ireland; there was no want of specie, and no run on the Bank was even thought of. However, it was passed 'for the sake of conformity.' In the same spirit of conformity, the Bank of Ireland discounted good bills, with sixty-one days to run, at five per cent. But the ordinary rate of interest im Ireland was then six per cent. The consequence was, that the Bank of Ireland notes in circulation, which, on the 1st of April 1797, immediately after the passing of the Act, amounted to 737,268*l.*, rose in the following progress:—

	£
1st April 1798, to	1,225,525
„ 1799, to	1,737,879
„ 1800, to	2,482,162
„ 1801, to	2,626,471
„ 1802, to	2,816,669

The natural consequences followed. The exchange on England fell 10 per cent.: a gold guinea sold for a paper guinea and 2*s.* 8½*d.* premium; all good silver money disappeared, and its place was supplied by a base counterfeit coinage worth about 25 per cent. of its nominal value. The Irish treasury refused to take this coinage from the post-office, and consequently the postmen refused it from the public, and detained all letters. Customers were forced to run in debt, and tradesmen to give credit from the absence of change. Ireland, in short, exhibited the disease with which she had been innoculated by England; but, as might have been expected from the weakness of the patient, in a more virulent form.

At length, the evils which Lord King had foretold actually burst also upon England. The bad harvests of 1808, 1809, and 1810 — the vast foreign expenditure of the Government, the exclusion of British manufactures from the Continent, and of British shipping from the Continental ports, the enormous freights and insurance at which we were forced to import in foreign bottoms, the sudden opening of the South American markets, and the mistakes of our merchants as to the extent and the nature of the new demand—these causes created an amount of speculation, of failure, of discredit, and of commercial embarrassment, which had never been incurred before, and is not likely to be ever undergone again. The interest of money rose, and with it, the demand for discounts at 5 per cent.; and the Bank, following their routine, went on increasing them. Their private securities, consisting almost

exclusively of discounted bills, on the 29th February 1808, were 13,234,569*l.*; at about which amount they had averaged for the previous six years. They now rose as follows: —

	£
31st August 1808	14,287,696
28th February 1809	14,374,775
31st August 1809	18,127,597
28th February 1810	21,055,946
31st August 1810	23,775,093

The issue of notes exhibited a nearly proportional increase. On the 28th of May 1808 it was 16,899, 970*l.*; being also about the average of the previous six years. It rose as follows: —

	£
27th May 1809	18,252,780
26th May 1810	21,073,580
25th May 1811	24,446,170

The price of gold rose in the beginning of 1809 to 4*l.* 11*s.* an ounce. The exchange on Hamburg sunk from 35.5, its rate in July 1808, to 26.6, its rate on the 28th of December 1810, and that on Paris from 23.16 to 19. 8.

On the 20th of June 1810, the day before the Prorogation, the Bullion Committee delivered their well-known Report, in which they affirmed the existence of an excessive Paper Circulation: attributed that excess to the Restriction Act; and recommended a return to Cash Payments in two years. On the 6th of May 1811, Mr. Horner moved Resolutions embodying the conclusions of the Report. They were proposed to an unreformed House of Commons and to a Tory Government; and when we

consider the amount of the knowledge and intelligence of that House, and of that Government, it is not strange that they were rejected by majorities of more than two to one. But, even after allowing, in the large measure in which the allowance must be made, for the effrontery of the leaders, and the ignorance and subservience of the followers, of the party in power, it is perhaps strange, that Mr. Vansittart's rival resolution,—'That the promissory notes of the Bank of England have hitherto been and are at this time held to be equivalent to the legal coin of the realm,'—should have found any statesman to propose it, or any Assembly to adopt it.

At the time when this Resolution was carried, the price of gold had risen to 4*l.* 16*s.* an ounce, and the exchange on Hamburg had fallen to 24, and on Paris to 17.16.

Under such circumstances, Lord King resolved to show that *he* did not hold the promissory notes of the Bank of England to be equivalent to the legal coin of the realm.

He sent a circular to his tenants, holding leases granted before the beginning of the depreciation, or when it was less than at the date of the notice, requiring payment of the rent, either in guineas, or in Portugal gold coin of equal weight, or in Bank of England notes sufficient to purchase the weight of standard gold, requisite to discharge the rent.

It is very seldom that the single act of an individual can do so much good as would have been effected by this notice of Lord King's, if Parliament had allowed him to act on it. It suggested a safe mode, and that the

only mode, by which the public could, to a considerable extent, correct the errors of the Government, and obtain, if not a convenient, at least a steady, measure of value.

Had not the legislative interference which we have to relate, occurred, the example must have been followed. Some difficulty would have arisen at first. All landlords and creditors would not have moderated their legal rights as equitably as Lord King did; but this would have been set right by the Courts of Equity, or by law. As to subsequent contracts there could have been no real difficulty. Two prices, a gold price and a paper price, would have been established, and one would have been understood where the other was not specified. The Bank Directors must have admitted that their notes were of less value than the coin which they promised to pay. They would have maintained probably that the variation was occasioned, not by the fall of their paper, but by the rise of gold. But however they accounted for the difference, they must have been anxious to remove it. Though they could neglect the foreign exchange, they could not have borne to see their paper in the British market at an open discount. Not long before, between February and August in 1795, they had reduced their circulation from 14,017,510*l.* to 10,862,200*l.*; and in August 1796, to 9,246,790*l.*;—a much smaller proportionate reduction would now have been sufficient to raise its value to par.

But even if they had persisted in their wild course, if they had increased their issues, until, as was the case in 1814, they amounted to nearly twenty-nine millions,

and gold rose to 5*l.* 10*s.* an ounce, still, the mischief would have been much less than what really followed. The public creditors' loss would not have been greater, though it would have been more evident. It is probable that the Government would have been obliged, in its subsequent loans, to borrow and to pay in gold, and the national debt would now be less by many millions. The foreign exchanges would have been quoted in gold, and could not have risen or fallen beyond the expense of transmission. We should have saved in our imports and in our foreign expenditure the additional price which the foreign producer and merchant were forced to put on their commodities, in order to indemnify themselves against the contingency of a fall in the value of the unsubstantial paper pound, in which our contracts were actually made. And above all, we should have escaped all that part which was nominal, of the enormous rise of agricultural produce — of rents, and of incumbrances on landed property, that were the pretext for the Corn Laws which oppressed us for forty years.

Diis aliter visum est. Among the anti-bullionists, a sect which, like the believers in witchcraft, has now been nearly dissolved in the blaze of political knowledge, but was then numerous and powerful, one of the most eminent was Lord Stanhope. The Resolutions which he submitted to the House of Lords, affirming the total unfitness of the precious metals to serve as a medium of exchange or a standard of value, and proposing to substitute for them for ever inconvertible notes and transfers in the Books of the

Bank, though now forgotten, expressed the opinions of a large portion of his contemporaries.* He saw that we were in danger of returning to a metallic currency, and he came to the rescue of his theory. On the 27th of June 1811, he laid on the table of the House of Lords, a bill making it illegal to receive or to pay gold or bank-notes at more or less than their nominal value. At first it was ill received by the Government, and Lord Liverpool said that he should oppose it on the second reading. On the second reading, the 2nd of July, Lord King answered Lord Stanhope by a speech which is our only specimen of his powers as a speaker, since it is the only one that has been correctly reported. It shows how much we have lost. Nothing can be clearer, or more concise, or more complete, than his defence of the equity and of the expediency of his conduct.

'Since the late decision,' he said, 'of the House of Commons, it appears to be the declared intention of the Government that the restriction shall continue to the end of the war, however distant that period may be. The subject is thus brought home to the individual interest of every man whose property is yearly, even monthly deteriorated. Every hope and prospect of amelioration being destroyed, there appears no choice but either to submit with tame resignation to receive payment in currency, of whatever value it shall please the Bank of England, in their forbearance and moderation, to permit

* They are to be found in the Edinburgh Annual Register for 1811, Part ii. p. 291.

henceforth to belong to the currency of the country; or to have recourse to the remedy which individuals possess by law.

'It was asked insultingly, in another place, whether any person had ever yet ventured to refuse Bank paper in payment or satisfaction of a lawful debt; and, on that foundation, it was attempted to be argued that, in point of fact, there existed no difference between paper and gold, and no actual depreciation. By bringing this question to issue, at least one of the remaining wretched supports of this fatal system will be overthrown. In this state of things, for the defence of my property, I have thought it advisable, to inform my tenants holding lands under old leases, and under old leases only, that I can no longer continue to receive bank-notes at their nominal value. The plain broad principle upon which I have acted is, to require payment in a currency of the same intrinsic value which the currency possessed at the date of each respective agreement. Where, may I ask, is the hardship of this demand? In proportion as the currency is depreciated, the price of wheat, of cattle, of all the produce of the land, is augmented. The tenant suffers no loss, if he is required to make only an equitable compensation; he has already received an advance in the sale of his produce; he is only prevented from acquiring an additional profit, to which he can have no just claim. To any increase of price, in consequence of the increasing opulence and prosperity of the country, the tenant is justly entitled. The two causes of the increased price are

totally distinct; the one arises from the fair increased demand and consumption of the country, which may well have entered into the calculation of the amount of rent; the other proceeds from an anomaly in the currency, which never could have entered into the contemplation of the parties.

'Having acted on principles such as I have described, and being satisfied with my own conduct, I shall not be deterred by clamour, or by any imputation whatever, by which it may be attempted to prevent me from insisting, with firmness and moderation, on a just and legal demand. If the notes of the Bank of England are not depreciated in value, and if, in fact, there is no difference between paper and gold, the preference given to the latter will be an idle preference, of no public inconvenience, because it will not be followed. If the value of the Bank paper is really at par, it is not in the power of any individual to alter the fact; and any attempt to do so would be despised as it deserved; but, if, on the contrary, the Bank paper is greatly inferior in value to gold coin and bullion, it is highly meritorious to expose and resist a system through which the whole community is impoverished and defrauded.

'It is said that some legislative interference is absolutely necessary to protect the tenants against the demand of their landlords, and on that account the bill is favourably received by those who profess to support the interests of the former. Little, indeed, do these men understand the interest of the tenant. If once the impious breach is made

in existing contracts, if once the Legislature interferes with a violent hand, and tears out of the contract those positive stipulations, in faith of the due performance of which one of the parties has delivered over his valuable property, in the firm reliance that he shall be permitted to receive what he considered as a valuable equivalent, there is an end of all faith both in public and private transactions. No man can henceforth place his dependence on the faith of contracts; the lands must be occupied by yearly tenants, for no landlord, after so dreadful a lesson of legislative injustice, will resign his property for a fixed term to the chance of an uncertain value. There has already appeared a general unwillingness to agree to new leases for long terms; and any suspicion of the possibility of interference with existing contracts will extend that unwillingness to make leases even for the shortest periods.'*

During the interval between the first and second readings, Lord Liverpool seems to have discovered that the Government had been committed by its proceedings in the House of Commons, and that Lord Stanhope's bill was a necessary supplement to Mr. Vansittart's resolutions. It is rarely that a Minister gives up consistency to truth or to policy; and Lord Liverpool was not a man from whom such a sacrifice was to be expected. He supported the bill, and it passed, and postponed for eight years longer the success of Lord King's efforts to give to the nation,

* P. 231, *et seq.*

which is more dependent than any other existing community on the use of money, a money of stable value.

We have dwelt on Lord King's services in the Currency Question, partly because the time at which they were performed is now so distant that many of our readers may have forgotten them, while some perhaps never knew them; partly because there are some appearances connected with the period of the restriction, which, admirably as the history of that period has been written by Mr. Tooke, seemed to us still to deserve explanation; but principally, because this was the subject on which Lord King was preeminent both as a political philosopher and as a statesman.

He laboured to release the producer of food from Tithe, and the consumer from Monopoly, with the same vigour and the same earnestness with which he had devoted himself to the restoration of the Currency; but these great subjects afforded less room than that of the Currency for the exercise of his remarkable powers of analytical and inductive investigation. The part which he acted in regard to them, furnishes unquestionable proofs of his sagacity and his patriotism; but it is only by his 'Thoughts on the Effects of the Bank Restrictions,' that he has secured for himself a high and enduring place among the original thinkers in Political Science.

COLONEL KING.*

[Edinburgh Review, April 1848.]

'THE first element of the social union, obedience to a government of some sort, has not been found an easy thing to establish in the world. Among a timid and spiritless race, like the inhabitants of the vast plains of tropical countries, passive obedience may be of natural growth; though even there we doubt whether it has ever been found among any people with whom fatalism, or in other words, submission to the pressure of circumstances as the decree of God, did not prevail as a religious doctrine. But the difficulty of inducing a brave and warlike race to submit their individual *arbitrium* to any common umpire has always been felt to be so great, that nothing short of supernatural power has been deemed adequate to overcome it; and such tribes have always assigned to the first institution of civil society a divine origin. In modern Europe itself, after the fall of the Roman empire, to subdue the feudal anarchy, and bring

* Twenty-four Years in the Argentine Republic. By Col. J. Anthony King, an Officer in the Army of the Republic. London: 1846.

the whole people of any European nation into subjection to government (although Christianity, in its most concentrated form, was cooperating with all its influences in the work), required thrice as many centuries as have elapsed since that time.

'Wherever this habitual submission to law and government has been firmly and durably established, and yet the vigour and manliness of character which resisted its establishment have been in any degree preserved, certain requisites have existed; certain conditions have been fulfilled, of which the following may be regarded as the principal. First; there has existed, for all who were accounted citizens — for all who were not slaves, kept down by brute force — a system of *education*, beginning with infancy and continued through life, of which, whatever else it might include, one main and incessant ingredient was *restraining discipline*.

'The second condition of permanent political society has been found to be, the existence, in some form or other, of the feeling of allegiance or loyalty. This feeling may vary in its objects, and is not confined to any particular form of government; but whether in a democracy or in a monarchy, its essence is always the same; namely, that there be in the constitution of the state *something* which is settled, something permanent, and not to be called in question; something which, by general agreement, has a right to be where it is, and to be secure against disturbance, whatever else may change.

'When the questioning of this fundamental principle is

(not an occasional disease, but) the habitual condition of the body politic; and when all the violent animosities are called forth, which spring naturally from such a situation, the state is virtually in a position of civil war; and can never long remain free from it in act and fact.

'The third essential condition, which has existed in all durable political societies, is a strong and active principle of nationality. We need scarcely say that we do not mean a senseless antipathy to foreigners, or a cherishing of absurd peculiarities because they are national; or a refusal to adopt what has been found good by other countries. In all these senses, the nations which have had the strongest national spirit have had the least nationality. We mean a principle of sympathy, not of hostility; of union, not of separation. We mean a feeling of common interest among those who live under the same government, and are contained within the same natural or historical boundaries. We mean, that one part of the community shall not consider themselves as foreigners to another part; that they shall cherish the tie which holds them together; shall feel that they are one people, that their lot is cast together; that evil to any of their fellow countrymen is evil to themselves, and that they cannot selfishly free themselves from their share of any common inconvenience by severing the connection.'*

These remarks, of one of the profoundest and wisest of modern thinkers, are well illustrated by the present situation of the confederate states which constitute the

* Mill's Logic, vol. ii. p. 599.

vast Argentine Republic. With a territory of which the British islands would be a subordinate province, with a more fertile soil and a finer climate than are enjoyed by the most favoured parts of Europe; with means of transport by land unimpeded by natural obstacles, and by water assisted by extraordinary facilities; with plains swarming with horses and cattle, and with mountains where mineral riches tempted millions of British capital to migrate from the safest to the least secure of governments — with all these natural advantages, the Argentine Republic is poorer, less populous, and less civilised than it was when compressed by the ignorant and selfish tyranny of Spain. Under the Spanish rule the South American provinces contained a population of more than six millions, excluding the Indians, a population nearly double that of the British North American colonies which declared their sovereignty. Thirty years of independence made these colonies one of the great nations of the civilised world. Thirty years of independence leave La Plata with its plains uncultivated, its mines abandoned, its cities half ruined, defenceless, and, therefore, constantly the victim of the insolence and injustice of foreigners, and at home oscillating between anarchy and despotism.

The difference between the fates of the two countries is generally accounted for by the existence in the British colonies of long habit of self-government, and the absence of those habits in Spanish America. This, however, as respects Spanish America, is not strictly accurate. The institutions of Spain, both at home and in her colonies,

have always favoured local self-government. A Spanish village is a little republic, managing and mismanaging its own affairs with little interference on the part of the higher authorities. With respect to her colonies, the prevailing feeling of the mother-country was always the fear of revolt. She knew how little she possessed or deserved their affection, and, during the last century, her notorious weakness made it difficult for her to inspire fear. Her object, therefore, was to keep her dependencies still weaker than herself, and, for that purpose, to deprive them of the strength which combination would have given to them. In this attempt she was assisted by nature. They were scattered over a whole hemisphere, each inhabited district a mere oasis in the wilderness, to use Mr. Merivale's picturesque language, 'separated from the rest of the world by deserts of ice and snow: by ravines compared with which the depth of our Alpine valleys is insignificant, by provinces of forest or by hot and unhealthy plains.' Commerce, and even intercourse, between district and district was discouraged, and, indeed, generally prohibited. Every town, and in many provinces every village, was, in its internal affairs, a separate community, subject to the superintendence of a Spanish official, but knowing little of the higher colonial authorities, and still less of those of Spain. Of mere local government there was probably more in Spanish than in English America.

The real causes, ultimate and proximate, of the different fortunes of the two countries, are to be found in Mr. Mill's

general propositions. Obedience to the law is the characteristic of the Anglo-American, resistance to the law that of the Hispano-American. And the obedience of the one and the resistance of the other depend on the existence in the one, and the absence from the other, of two out of the three great requisites which he lays down as essential to civil subordination.

One of these requisites, the possession of a common object of veneration and affection, was enjoyed, indeed, by the inhabitants of the vice-royalty of La Plata, when, in 1816, they declared their independence, as fully as by the men of New England in 1776. They were as much attached to Catholicism, or to what they supposed to be Catholicism, as the Bostonians were to their forms of Protestantism. But there the resemblance ends. It is scarcely necessary to say in how eminent a degree the first of Mr. Mill's requisites, education, was possessed by the Anglo-American colonies. At the time of the signature of the declaration of independence, they were probably the best educated communities in the world. We are not speaking of the higher education, that which produced Washington and Jefferson, and Hancock and Jay, but of the education of the people, of an education which, in Mr. Mill's words, trains the human being in the habit and thence in the love of subordinating his personal impulses to the ends of society.

But, in 1816, the Creole and mixed populations of La Plata were scarcely better educated than the Indian. The principal habits which education ought to impart are

intellectual freedom and moral subordination. The Spanish Americans were trained to intellectual slavery and moral anarchy. The predominance of the priesthood, and the terrors of the Inquisition, produced the first. The ignorance and corruption of the priesthood were the main causes of the second. They acquired, as a priesthood always strives to do, the monopoly of the education of their flocks, but they had not the power, nor perhaps the will, to teach anything beyond the routine of a debasing superstition. They fettered the mind and left the will unsubdued. The Jesuits, indeed, introduced into their missions a hot-house civilisation, of which the ruling principle was obedience. But they operated only on Indians, and their well disciplined communities—though secured from want, and never disturbed by crime, though apparently free from all the checks to population, moral and physical—never kept up their numbers, and fell to pieces the instant they were touched by a secular hand. With the exception, perhaps, of the Abyssinians, and of the Indo-Portuguese, the Creoles and mixed races of Southern Spanish America were in every sense the least educated communities claiming to be civilised Christians.

The third of Mr. Mill's requisites—a feeling of sympathy, of community of interests and of fortunes—was enjoyed imperfectly by the Anglo-American colonies previously to the conclusion of the war of independence; and even for some years afterwards. The New Englanders had long been allied against their common enemies, the Indians and the French; but the mutual relations of the other colonists was rather that of communities connected

by the accident of a common sovereign, than of fellow countrymen. The war, indeed, united them for a time: to use the words of Washington in his last address, 'their independence was the work of joint counsels and joint efforts, of common dangers, sufferings, and successes.' But as soon as the pressure was removed, the elements which it had kept together recoiled. State began to legislate against state, and to pass laws inconsistent with the treaties and the obligations by which the congress, which had necessarily acted as the common organ, had bound itself. Disputes began about boundaries, often depending on inconsistent grants, and false notions as to the configuration of the country. Force was threatened, and sometimes employed; and the confederacy was in imminent danger of splitting into a mere geographical aggregate of jealous, and perhaps hostile, republics.

But even in this anarchical period, when the union of the states was weakest, the cohesion in each state was perfect. No town or district ever contemplated withdrawing from the larger community of which it was a member. It might disregard the distant congress, but remained obedient to the authorities of its state. And when, in 1788, the energy of a few great men, and the good sense and forbearance of the people, converted the loose confederacy of 1776 into a real union, and the separate states into provinces of one republic, the loyalty which had been borne to the state was at least in the north transferred to the nation.

In Spanish America the opposite tendency has been

equally remarkable. To a certain degree this is characteristic of both the races, Spanish and Indian, of which, or out of which, the mixed population of Spanish South America is constituted. Like the Greek, the Spaniard is attached rather to his province than to his country. He is a Castilian, an Andalusian, or a Biscayan; and the Indians, as is the case with all savage tribes, are split into small communities, always unfriendly, and usually at war. We have seen that this proneness to disunion was promoted by natural obstacles to communication, and by the policy of the mother country. The result is not ill summed up by Colonel King. He says, 'that during the twenty-four years which he passed in the country, there existed no sympathy of feeling or action, morally or politically, either between the government and its component provinces, or between the provinces one with another. Each petty governor was irresponsibly supreme in his province, and totally unaccountable to any other authority; and the various provinces were permitted to declare and wage war against one another, as in the case of Salta and Tucuman, without the intervention of a word. No sufficient political unity had been effected, and no political head, that should command the confidence of the people, established.' No wonder, therefore, that the anticipations in which the sanguine friends of liberty and civilisation were indulging in 1824, when Mackintosh presented a petition from the merchants of London for the recognition of the Independent States of South America, have been so grievously disappointed: and that the New World, which

Canning boasted he was calling into existence, has not yet been found to answer his call, or indeed to have yet got out of chaos.

We have thought Colonel King's book worthy of a review, not for the literary merits of the work or the personal merits of the author. The book is ill-written, and the character of the writer is commonplace—that is to say, commonplace in America. The carelessness with which he submits to be tossed about from danger to danger, and from one form of wretchedness to another, is not of English growth. But his book, though of little value as a composition, and, we suspect, not very trustworthy as a personal narrative, is instructive as a picture, and, we believe, as far as the author's means of observation extended, a faithful picture, of a country of which we ought to know much, and actually know very little.

The opening of Colonel King's autobiography is characteristic:—

'In the year 1817, at the age of fourteen years, I left my native city, New York, and without a dollar in my purse, took passage for Norfolk. Arrived there, by the sale of a pocket knife, I obtained food; and strolling along the wharfs, found a vessel bound to Baltimore. On my arrival there, I took up my quarters at the house of a Mr. Pitcher. He obtained for me shipping papers on board the brig Wycoona, received my advance money, and gave me as an outfit two shirts. Where the vessel was bound to I neither knew nor enquired.'*

* P. 3.

The vessel was bound for Buenos Ayres, and on its arrival King was put ashore as unfit for naval service. After supporting himself for a few months as shop-boy to a perfumer, he obtained an ensigncy in the federal army of the Argentine Republic, and was attached to the corps of General Ramirez, called by him Ramarez, the governor of the province, or, as it called itself, the state, of Entre Rios.

He finds General Ramirez marching against Artigas, who, at that time, claimed the title of chief of the independent state of Banda Oriental.

Of Artigas Mr. King tells little, and that little is incorrect. As his influence on the fortunes both of Buenos Ayres and of Banda Oriental * has left permanent consequences, we will add something to Mr. King's meagre notice. He was born in 1766, in Monte Video, the son of Don Martin Artigas, a considerable landed proprietor. In early life he joined the smugglers whom the anti-commercial legislation of Spain and of Portugal attracted to the long line of frontier separating their possessions. Nothing seems to brutalise men more than the attempt to repress, by severe punishment, conduct which appears to them innocent. Smugglers and poachers have always been violent; and the cruelty of the South American government, operating on a semi-barbarous, and, as we now find, a bold population, made the contrabandistas a species of

* Accurately, we ought to say *The* Banda Oriental. Banda Oriental means Eastern Bank. The political designation of the country is The Republic of the Uruguay.

banditti. Artigas had great qualities, bodily and mental. His strength and dexterity, his courage and skill, were all remarkable, and he soon was the acknowledged chief of the ruffians who infested the northern border of La Plata. The viceroy adopted a plan familiar to the Spanish authorities. He offered Artigas pardon, a large salary, and rank, if he would enter the service of the government. Artigas accepted, was appointed conservator of the border, turned his whole force, without mercy, against his old associates, and gave to the country which had been confided to him security which it had never enjoyed before. When Buenos Ayres began the war of independence in 1810, Artigas was for some time the principal support of the Spanish cause. In 1811, he suddenly turned patriot, and assisted the Buenos Ayres force, which was attempting to revolutionise Banda Oriental, and gained for it the battle of Las Piedras, under the walls of Monte Video.

The contest between the Spanish and revolutionary forces was long; and the Emperor Pedro found in it a pretext for adding a new province to an empire already inconveniently and dangerously large. He availed himself of the dangerous principle which Mr. Canning is guilty of having, in the great case of Greece *v.* Turkey, introduced into international law, that a third power has a right to say to two independent states, or to two parties in an independent state, 'Your quarrels are inconvenient to me, they hurt my trade, and set a bad example to my subjects; it is my duty, and therefore my right, to put an end to them.' And the means by which he proposed to

effect this, was to incorporate Banda Oriental with Brazil. He invaded it with what in those countries is a considerable army, about 8000 men. The Buenos Ayres troops retired, and Artigas declared Banda Oriental to be an independent state, and himself to be its chief; and though the Brazilians forced their entrance into Monte Video in the beginning of 1817, he prevented their authority from being recognised in the greater part of the country. His assumption of independence irritated Buenos Ayres, and before the time of Mr. King's Narrative he was twice attacked by the Argentine troops and repelled them.

Artigas was defeated by Ramirez in a bloody and decisive battle. He took refuge in Paraguay, and met with the usual fate of those who trusted to the hospitality of Francia. He was detained there till his death, about the year 1826. We have said that the conduct of Artigas left permanent consequences. We have little doubt that, if he had not lived, Banda Oriental would now be a portion of the Brazilian empire, or of the Argentine Republic. He first declared its independence. For many years he supported it against the Spanish party within, and the attacks of Brazil and Buenos Ayres from without; and though at his death the town of Monte Video was still held by a Brazilian garrison, two years afterwards Buenos Ayres and Brazil, by the treaty of 1828, declared Banda Oriental to be 'a free state, independent of all and every other nation, under the form of government which it may judge most convenient.'

There can be no doubt that the independence which he

gave to his country, if it can be preserved, is beneficial to Europe. If both banks of the Plata were in the hands of one sovereign, and that sovereign felt the dislike of European intercourse which has characterised many of the American rulers, and few of them more than the dictator of Buenos Ayres, Rosas, he might seriously impede our trade with the interior. And if Monte Video were under the power of Brazil, it is probable that the jealousy of Rio Janeiro would lead that government to cramp the commerce of the Plata. The independence of Banda Oriental is, we repeat, the best arrangement for us. But whether it be a blessing or a curse to that country itself is a question still undecided. It may be thought that the best fate for Banda Oriental, up to the present time, would have been to be a member of the comparatively tranquil empire of Brazil. Spanish and Portuguese races, however, do not easily amalgamate; and in this case there was a mutual hostility of centuries. But the Argentine Republic, with its chronic civil war, would have been a still worse associate. On the other hand, independence has not saved Banda Oriental from civil war, and has exposed her to the attacks of Buenos Ayres, and to the fatal friendship of France. Upon the whole, we are induced to think that, as far as the interests of the country are concerned, incorporation with Brazil would have been the least objectionable of three alternatives—all very undesirable; and that the courage, and perseverance, and self-devotion of Artigas have only added one more to the instances of perversely misdirected

heroism with which the annals of Spain and of Spanish colonies abound.

Soon after the defeat of Artigas, Mr. King had a further specimen of the nature of the service in which he was engaged. His commander, General Ramirez, informed his troops that they were to march to Buenos Ayres, in order to overthrow Puyrhedon (called by Mr. King Pursedon), the supreme director of the republic —the defender of Buenos Ayres in 1807—the man from whom King, a few months before, had received his commission. In Spanish America the immediate and subordinate authority, the *species infima* of power, has always the best chance of obtaining obedience. No remonstrance appears to have been made by the troops—no opposition was offered to their march—and as soon as they approached the capital, Puyrhedon fled to Monte Video. Who succeeded him it is not worth while to enquire, for many of the supreme directors held office only for months, or even weeks.

Mr. King was immediately engaged in a more arduous service, for in these countries to support the existing authority is more dangerous than to attack it. Pejor est conditio possidentis. The three days of leave which he had obtained on entering Buenos Ayres were, he says, 'not yet expired, when General Ramirez received orders to move forthwith against General Carrere, who was then on his route to Chili, with the view of revolutionising that country; and we were soon once more on the move over the *pampas*, with the prospect of a march of about two hundred leagues before us.

'Carrere was a native of Chili, of high family — a family that had been supplanted in its authority by the family of O'Higgins. Two of the General's brothers had some years ago been shot in the province of Mendoza, in the Argentine, for what cause I know not, and the one now on his march to his native country, for the purpose of establishing what he considered his family rights, had, a short time previously, landed at Buenos Ayres, on his return from the United States; and, with plenty of funds, began gathering an army of adventurers in the interior, for the purpose of crossing the Cordilleras into Chili. This movement of Carrere the Government of the Argentine felt called upon to check, and it was for that object that the division under Ramirez was ordered to march.'*

As is usually the case in Mr. King's accounts of any events which he has not witnessed himself, the greater part of this statement as to the Carrera family is incorrect. The three brothers and their sister, a woman of remarkable talents and beauty, certainly belonged to one of the first families in Chili. So much is true. But they were the supplanters, not the supplanted. The junta which, on the 18th of Sept. 1810, superseded the authorities of St. Iago, and was acknowledged by all the provinces of Chili, was, perhaps, the wisest and most moderate of the revolutionary governments of Spanish America. It was the creation of the aristocracy and middle classes, not of the populace; and its errors were on the side of moderation. It acknow-

* P. 22.

ledged Ferdinand VII.—it retained the Spaniards not merely as fellow-citizens, but in the offices and places of trust of which it found them possessed. It summoned a congress which enacted freedom of trade, salaried the clergy, and prohibited their taking dues or offerings from their parishioners; and was the first of the governments of America which provided for the gradual abolition of slavery.

Against this junta and congress the Carreras rose, inflamed the anti-Spaniard and anarchical feelings of the rabble, and seduced the army—as anyone who is wicked enough may always do in revolutionary times—dissolved the congress, and divided between themselves the supreme military and civil powers. The authority of Spain was now thrown off; and in the beginning of the year 1813, about a year after this revolution, Chili was invaded by a force despatched by the viceroy of Peru. The Carrera government was oppressive and unsuccessful. It was overthrown in 1813; the command of the army intrusted to O'Higgins, one of the most estimable of the American leaders; and the supreme directorship to Don Francisco Lastra. During his presidence, a treaty was made between the viceroy of Peru and the revolutionary government of Chili, through the mediation of Captain Hillyard, R.N., on the basis that Chili should return to its allegiance, but retain its free trade and its internal administration—in short, should enjoy the protection of Spain, but virtually retain its independence. To oppose this treaty, which gave to Chili, with peace, all that it could have acquired by war, the Carreras raised the

populace of St. Iago, deposed Lastra, and again usurped the government.

With a folly as great as that of the Chilenos, but less apparent, the viceroy of Peru refused his ratification, again invaded the country, and in the course of a few months re-conquered it; drove into exile both O'Higgins and the Carreras; and remained absolute master until 1817. In the beginning of that year, a force from Buenos Ayres, under the command of San Martin and O'Higgins, crossed the Andes from Mendoza, by the pass so well described by Sir Francis Head; and after a long and, more than once, doubtful struggle, the Spanish troops were driven out. The two younger Carreras were in the Argentine territory when the army of San Martin left it. They were known to be the personal enemies of the new supreme director, O'Higgins. Twice they had overthrown what appeared to be established governments. It was thought likely that they would make a third attempt. They were seized, tried on some frivolous accusation, and executed at Mendoza on the 11th of April, 1818, a few days after San Martin had secured the independence of Chili by the victory of Maypo. The elder brother, the Carrere of Mr. King, collected an irregular force, many of whom are said to have been Indians, and menaced, not, as Mr. King tells the story, the government of Chili, but that of Buenos Ayres. It was against this force, and in defence of the government of Buenos Ayres, not of that of Chili, that General Ramirez was marching.

They found Carrera posted in the town of San Luis,

the capital of the vast province of that name — a capital so little resembling a town, that Sir Francis Head, when he first reached it, asked how far he was from it, and was told that he was in the middle of it.

The wild habits of a semi-savage life, the constant dangers from hostile Indians, and from accidents, the general recklessness of uncultivated minds, and perhaps the high bodily health and firmness of nerve produced by constant temperance, exposure, and activity, have given to the inhabitants of the Pampas an indifference to danger — at least to the dangers to which they are accustomed—not to be found among much better disciplined troops. Like the Irish, they seem to be impelled by a love of the excitement of fighting, and when this animal passion is aided by the hope of plunder and by the hatred which every town and even village in South America cherishes against every other town and village, they attack their opponents as soon as they see them, often without knowing what is the cause of quarrel, or what are the chances of success.

In the present case the force of Carrera was superior in numbers and in position. That of Ramirez, however, though men and horses were exhausted by a long march, instantly attacked. After a severe contest they were repulsed, and retired to a position about two miles from the town. Here, in a few hours, they were attacked in their turn by Carrera, broken, and, after losing nearly half their numbers, those who escaped the battle and the pursuit rallied and bivouacked on the plain, about five

miles further on their retreat. They were again attacked during the night, and dispersed — Villa de los Ranchos, a town some marches distant on the road to Buenos Ayres, being the point of rendezvous. By the time that they had collected together again, to the number of about 700 almost famished and dying men, they learned from a caravan of traders the characteristic fact, that General Echagua, whom they had left in command of their reserve, had gone over with his troops to the opposite party, and was then halting at Los Ranchos, on his march to hem them in between his own force and that of Carrera.

'Our first step was to secure the carts of the caravan, which were about thirty in number, and very large. Of these we formed a barricade, leaving a hollow square, intended as a place of retreat, if driven to such a necessity. Three or four of the bullocks by which the carts had been drawn furnished a meal for our almost starving company; and before Echagua was aware of our position, we were greatly improved in condition, both of body and mind. In the course of the morning, a foraging party from Echagua rode within half a mile of us, and, after a moment's halt, wheeled, and returned on a full gallop. They had discovered us; and at nine o'clock we heard the long-expected clarion of the traitor. Our little complement of seven hundred men were drawn up outside of our barricade, to oppose a force of near three thousand.

'Our ammunition was soon nearly exhausted, and, after the first show of resistance, we took shelter within the

enclosure of our breastwork. Here, from loopholes cut through the bottoms of the carts, which had been placed upon their sides, we poured such a well-directed fire, that our assailants found it prudent to retire beyond the range of our guns. They had secured the remaining bullocks belonging to the caravan, and sat down at a short distance, determined to starve us to death. Thus imprisoned, we remained all that day and the following night without food or drink. The sufferings of the wounded were extreme; and early next morning a council was called, at which it was proposed that we should send a flag of truce, with an offer of capitulation. The proposition was at first strenuously opposed; but the cries of our companions, begging, with their dying gasp, for "Water! water!" wrought upon the hearts of our most determined men, and we at last reluctantly consented. Captain Boedo was selected as our messenger, and he left the breastwork just as a large body of Echagua's troops had commenced a movement towards us. Seeing the flag, they halted at a distance of about three hundred yards. Boedo met them, delivered his message, and was instantly brought out in front of their column, his hands were tied behind him, and he was shot before our eyes. This was instantly followed by a headlong assault.

'Our companions fought with such desperation and slaughter, that our enemies were once more forced to retire, and with them, to our astonishment, some forty of our own men rushed from the enclosure, and attempted to cover their desertion in the general retreat; few, however,

accomplished their design, for they were a close mark, and the carbines of our indignant troops brought many of them to a disgraceful death. Another council was now called; the sufferings of the whole body had become intense; officers and men had become perfectly desperate, and it was resolved, that rather than stay there, dying inch by inch, we would make a sortie, and fall upon the sabres of our enemy. General Ramirez, the good, the brave man, was alone in opposition to this measure. "Gladly," said he, "would I give my own life as a hostage for such gallant fellows, would such an act appease yon bloody monster." His words were interrupted at this moment by the discovery that our barricade was on fire, whether by accident or design I know not; but the flames rose and crackled so fiercely among the dry timbers and wood-work of the carts, that to stay them was impossible. The whole body rushed forth, and in an instant we were fighting for life on every hand, the enemy having completely hemmed us in in a common centre. During the fray I received a blow upon my breast from the butt end of a musket, which fractured my ribs, and felled me to the ground. In attempting to rise, I was instantly seized by two men, and, on looking about me, I discovered several of our friends prisoners like myself, and among them General Ramirez.

'The fight lasted but a few moments, yet the ground was strewn about me with the dead and dying, for so long as a man had been found in the attitude of resistance he was put to the sword. Poor Ramirez! his fate we all knew. No ceremony was required by these butchers; and

without trial, or even the calling of a council, to give his death the colour of an execution, as soon as the skirmish was over, he was led before the little remnant of his own army, his arms pinioned, a guard at his side, and a file of soldiers following in his rear. No word was spoken; but as the brave man knelt before his murderers, he cast upon me a long, an earnest look, which I shall never forget, and at the next instant fell dead before me. The head was severed from his body on the spot, and sent as a trophy through the seditious towns of the republic.'*

So far we have followed step by step the progress of Mr. King, as his individual story produces a more distinct picture of the strange people among whom he was thrown than could be given by any general statement. But the monotonous exhibition of treason, treachery, cruelty, and selfishness, would tire our readers. They will, probably, be satisfied by being told that Carrera was soon afterwards—that is in the beginning of the year 1820—defeated by the governor of Mendoza, and shot on the spot where his brothers had been executed two years before; that Mr. King was released by a party of his own friends, under the command of General Bustos, again captured, again set free, and ultimately found his way to San Juan, the capital of the republic of San Juan de la Frontera.

After remaining at San Juan for some weeks, he was arrested, in consequence, as he tells us, of his having on a trial given evidence unfavourable to a friend of the governor.

* P. 30.

'At the end of a month,' says Mr. King, 'the officer of the guard entered my cell, and told me that the governor had sent for me. This was the first person with whom I had spoken since my incarceration.

'The governor spoke to me in a tone of kindness, which persuaded me that I had fallen into good hands, and raised my hopes of an immediate liberation. There were many persons in the hall at the time engaged with the governor on business, and I stood apart, waiting his leisure. Others came and went; until, at the end of two hours, being for the first time unoccupied, he arose, and said, "Be kind enough to follow me." I obeyed; and he led me, without speaking another word, to the Carcel, or underground prison, connected with the building in which we then were; and, calling an officer of the guard, said to him, "Take charge of this man. You have your orders."

'My heart fell; for I well knew that in these cells were confined none but prisoners of state, few of whom ever quitted their incarceration but to meet an execution in the prison-yard. Thus confined, the prisoner awaits in solitude the decision of a despot. From day to day, from hour to hour, perhaps for months, he may remain; and when at length an officer enters the prison-house, holding a sealed packet in his hand, and invites the prisoner forth, none know its contents until the parties have reached the yard. Here the packet is opened: if it direct his release, he is set at liberty; if it command his death, he is immediately shot. I was at once placed in a cell, *entro*

porto (or between two doors). My cell was about four feet wide, by twelve in length, with a small grating at the top of the wall over one of the doors, through which I could see in the distance the snow-clad summits of the Cordilleras; and a corresponding grating at the opposite end, from which I could see only the tops of the orange trees in a neighbouring garden, with their golden fruit flashing in the sunlight.' *

From this confinement he was released by accepting the offer of a commission in a force which General Urdeminia, a Peruvian, was raising in the republic of Salta for the purpose of assisting the independent party in Upper Peru.

There is throughout Mr. King's work such an absence of dates, such a misplacing of events, such a confusion of names, and such an ignorance of all facts beyond his own observation, that it is difficult to say at what periods the incidents of which we have now to give a sketch occurred. The following dates, however, may assist the reader. He appears to have been released not long before Bolivar entered Peru, which he did on the 1st of September, 1823. The Royalist commander in Potosi, at that time, was Olañeta (called by him Olanietta). He maintained himself for a few months after La Serna, the Spanish viceroy, with his whole remaining forces, had surrendered at Azacucho, and was killed in or about April 1825. The author's marriage, which closed his military life, seems to have taken place in 1829.† Mr. King's

* P. 58. † P. 216.

services in support of the independent cause in Peru, appear, therefore, to have taken place in the years 1823 and 1824. His subsequent adventures between 1824 and 1829.

It is remarkable that Peru, though the part of America least accessible from Europe, was that in which Spain longest preserved her authority. There seems, indeed, no reason to suppose that the Royalist forces would have been subdued if they had not been attacked first from Chili by San Martin, and afterwards from Columbia by Bolivar. The Peruvian insurrection was easily put down. This was probably owing in part to the low moral and intellectual condition of the Creole population of Peru, partly to the fierce hostility of the Indians, who from the first conquest up to the present time have been and are still more oppressed by the Creoles in Peru than in any other portion of the American continent, and partly to the great civil and military talents of the Spanish commanders. La Serna, Canterac, and Valdez would have done honour to any service.

But the great support of the Spanish cause was the difficulty of the country. Peru is intersected, from north to south, by two vast chains of mountains, sometimes approaching between 100 miles of one another, sometimes separated by an interval of 500. It is divided, therefore, into three great districts — that to the east of the eastern chain, generally called the Montana; that between the two chains, generally called the Puna; and that between the western chain and the sea, called the Valles.

The Montana, the country that lies between the eastern slope of the Andes and Brazil, is covered by primæval forests, impenetrable to any but the unsubdued savage tribes by which they are tenanted, so far as they are tenanted by man. That between the two chains is a chaos of mountains, consisting principally of table lands of from 12,000 to 14,000 feet high, intersected by ravines 4,000 or often 5,000 feet deep, concealing valleys of great fertility, but without any communications except paths, impassable even by mules.

The third district, the Valles, extends along the coast for about 1,700 miles, and varies in breadth from seven miles to fifty. It is unrefreshed by rain, and watered only by the streams which at intervals of from twenty to ninety miles rush westward from the Cordilleras. It is to these streams that it owes such capacity as it has for cultivation. Where their banks are not too high and precipitous, the water is used for irrigation, and under a tropical sun what was a desert becomes a garden. The rest is an arid expanse of sand or rock, sometimes rising into hills which in any other country would be called mountains, sometimes intersected by impassable ravines. The best description of it is contained in the 'Memoirs of General Miller.' 'No stranger,' says the author, 'can travel from valley to valley, as the inhabited strips are inappropriately called, without a guide: for the only indication that the desert has been trodden before, is an occasional cluster of bones, the remains of beasts of burthen that have perished. The sand is frequently raised into immense clouds by

the wind, to the great annoyance of the traveller, who generally rides with his face muffled up. The obstacles to moving a body of troops from one point to another, can be appreciated only by military men who have had to contend against them. Description will fall short of conveying even a faint idea of the horrors of the desert. It is not rare for the most experienced guides to lose themselves. In that case terror instantly reduces them to a state of insanity. Unless they recover the path by chance, or are fortunate enough to see other travellers loom above the horizon, they inevitably perish, and their fate is no more known than that of a ship which founders at sea. A puff of wind obliterates the footsteps of a column of soldiers.' *

We now return to Mr. King. We have followed him to the time when the Spanish viceroy was in full possession of this inaccessible country, but threatened with invasion by Bolivar and his Columbians from the north, and by an Argentine army from the south, and Mr. King was on his way to join the latter force.

A journey in South America is a sort of campaign. His corps was stationed in the republic of Salta. His road lay through that of Tucuman. Each of these states claims to be independent, and if mere extent gave a right to self-government, would certainly be entitled to it, for the territory of each is greater than that of the British Islands. Both were then, and we believe are still, members of the Argentine confederacy. Both were then at war with Spain

* Vol. ii. p. 51.

and with Brazil, — enemies sufficiently formidable to satisfy any European appetite for danger. But, after the custom of South American confederates, they were at war with one another. And when Mr. King reached the city of Tucuman, he found it preparing to resist an attack from Salta. Though thinking it improper to take part in the defence, he resolved to see the event, and therefore awaited in the city the enemy's approach. The dissipation of this little provincial capital seems for the time to have turned his head. 'Our evenings,' he says, 'were passed at *tertulias de bala* and *tertulias de conversaciones* (balls and conversational parties), and I entered into the spirit of their enjoyments with all the eagerness and gusto of one who had been long severed from the cheering influences of civil life. Surrounded with beauty, fashion, and luxury, and with the most distinguished and wealthy for my companions, I went on through the torrent of gaiety with a bewildering sense of happiness, and, for the first time since I had taken arms, looked forward with a feeling of discontent to the moment when I should receive orders to renew our march.' *

Salta is eleven days' journey from Tucuman, so that these gaieties must have taken place while the enemy was actually on his march. They were interrupted by the necessity of making immediate preparation for defence.

'Every man and every boy that could hold a firelock was forthwith armed; each house became a fortress; and even upon the tops of the houses preparations were made

* P. 62.

by which the women could hurl stones and other heavy missiles upon the heads of the enemy. On the next day the enemy approached. The doors of the houses were barricaded, the windows closed, and a fearful silence, broken only by the occasional passing of small bodies of troops, pervaded the whole city. The stillness was awful; everything that could be done for safety had been done, and the people now only awaited the bursting of the impending storm. I had taken my post at the house of the governor, who was now with his troops; determined to defend that, at least, to the last extremity, and, in the event of the dreaded pillage, to protect his family. With a number of his family, I had ascended to the housetop, and from that spot we witnessed the approach of Ouemez,* with his army, followed by a train of some three hundred carros, provided for the conveyance of booty. Carnage followed upon every side: Ouemez' troops separated, carrying death and havoc through the various streets; and above the uproar of the battle, as they were met by small bands of troops and citizens fighting for their firesides, arose the shrieks of women, and the groaning prayers of the aged.' †

The assailants, however, scattered themselves in the town, were attacked by a reserve, driven out, and pursued with great slaughter. A few days after, Mr. King, on his road to Salta, followed the track of the enemy's retreat, and found, as he says, 'the ground literally strewn with the bodies of men, horses, wrecks of carros, and other

* The right name is Guemez. † P. 64.

equipages of the discomfited troops.' He reached the head-quarters at Humacagua, near the frontier, was detached to an outpost, because, as his general told him, being a foreigner, he could be trusted, and detained there for eight or nine months. At length the Argentine army resolved to assume the offensive, and Mr. King was made major, and appointed second in command in a body of about 700 cavalry, who were pushed forward in the direction of Potosi, in the hope of exciting an insurrection.

The expedition started from Oran, in the republic of Salta, and its first object was to dislodge a Spanish force stationed in a town which he calls Carriparee in Tarija, the frontier province of Upper Peru. The party, though unencumbered by baggage, and with every motive to speed, appear to have been more than two months on their march. Mr. King states the distance to be about 100 leagues, or 250 miles, so that they cannot have advanced at the rate of much more than four miles a day,—a curious proof of the difficulty of the country. Carriparee was found occupied by a superior force. The events of Tucuman were repeated. The Argentines forced their way into the town, the main force of the Royalists was dispersed, when the victors were attacked by a reserve, broken, and almost completely destroyed. Mr. King states the number who escaped to have been only twenty-three.

They fled to the forests by which the town is surrounded, and, instead of attempting to retreat to Oran by

the direct route, followed the Pilcomayo, which runs in this part of its course nearly due east. This led them through the country of the Chiriviones, one of the least barbarous tribes of the independent Indians. With them the fugitives rested for about three weeks. They could talk a little Spanish, and Mr. King suggested to one of their chiefs the expediency of letting his people be converted and become members of the civilised world. His answer, as translated by Mr. King, showed the impression produced on a bystander by the Spanish and Creole character. 'Christian! No, no, no. Christian very bad. Christian fight his brother: Chirivione fight his enemy—Chirivione live happy.' * What occurred during their short residence did not raise that character. One of the party, a Peruvian, injured a female of the tribe, and they escaped indiscriminate massacre only by a sudden flight by night. A circuitous journey of about six weeks brought them back to Oran.

Mr. King appears to have been a brave and useful officer. He was well received by the Governor Civilia (probably Cavilla), and immediately obtained the commission of Lieut.-Colonel in a new regiment which the government of Salta was raising to replace that which had been lost at Carriparee. Soon afterwards that regiment was destroyed, as its predecessor had been, in one of the predatory expeditions in which the Spanish Americans, like all semi-barbarians, delight. It had been undertaken in his absence, and, indeed, without his sanction. His

* P. 111.

character, therefore, did not suffer, and a third regiment was given to him with the rank of Colonel; and the command of a division, of what he calls 'the army then forming at San Francisco.' Whether this was a federal army, or one raised by the republic of Salta, in which San Francisco is situated, does not appear.

Colonel King had now reached the highest point which he was destined to attain in his military career. After having been employed for some months in disciplining his regiment, an interval of leisure occurred, he left San Francisco to make a tour in the northern part of the state, and, in the course of it, reached Juyjuy, a town about fifty miles from the frontier, charmingly situated on the river of the same name. What happened to him there we will let him tell in his own words.

'I was at the market-place, with my friend, awaiting the arrival of my servant, and expecting every moment to hear the tinkle of the bell attached to his mule. The sound of a bell at length reached my ear, but I was in earnest conversation and gave it no heed; when suddenly I received a blow from behind, which threw me a little forward, and knocked my *garro* * into the dirt. I turned to resent the insult; and met the frown of an exasperated friar. He was preceding the *host*, accompanied by his guard, from the musket of one of whom I had received the blow.

'The procession passed on. I felt that I had committed a crime sufficient to draw a watchful eye towards me,

* Gorra: a cap.

yet trusted that no further note would be taken of the circumstance. It was a vain trust, however; for, in the space of eight hours, I was arrested for contumely towards the holy church, and, without trial or examination of any kind, cast into a loathsome cell.'*

The governor did not venture to interfere. After he had been three months in solitary confinement, he was offered freedom if he would embrace Catholicism, or, at least, say that he had embraced it. He refused; but seems to believe that a pious fraud was practised for his benefit, and that his acquiescence was reported to the authorities; all that he knows is, that seventeen days after he was set at liberty, with no further punishment except the confiscation, for the benefit of the church, of all his property in Juyjuy.

He made his way, as well as a penniless man could, back to Oran, found his friend the governor deposed by a revolution, his regiment dispersed, and his command at an end. Probably, though Colonel King seems not to have known it, the army to which he was attached had been disbanded in consequence of the termination of the war in Upper Peru, which, by this time, had become the independent state of Bolivia. There is something striking in his description of his feelings as he left Oran for the last time, intending to return by way of Buenos Ayres to his own country.

'As I left the town, I turned back, from a small eminence, to take one farewell look, and was struck with

* P. 150.

admiration at the magnificence of the scene before me. Almost every house in the town has its orange-garden—some containing ten, twenty, and even fifty trees. The fruit was just ripe, and, from the position which I then occupied, the whole town seemed buried in one perfect mantle of green and gold, waving and flashing in the sunbeams. "Ah," thought I, "how inviting, how lovely is nature! Here is a country fitted for man's enjoyment, comparable even with the Eden of creation; yet all is lost, all is absorbed in the vortex of civil war."'*

At Salta he was recognised by one of his old soldiers, who, with feelings honourable to both parties, offered to join his fortunes and to accompany him as companion or as servant. The sale of his sword enabled him to buy a mule; his companion had another, and they proceeded, well equipped with everything except money.

His route led him through Tucuman, Santiago, and Catamarca, to Cordova. At Tucuman he found that his friend, General Aroüe, whose heroic defence of the town against Guemez we have related, had been deposed and publicly shot before the Government House. At Santiago, where he had passed a few days when on his way from St. Juan to Salta, he enquired for an old friend, Don Miguel Sovage, a man of letters and science. He, too, had been shot as a conspirator. Colonel King saw his wife in a mad-house. After undergoing at Catamarca an imprisonment — an incident which he rarely escaped in a long journey — he reached Cordova, and found it under the

* P. 161.

government of his old friend General Bustos (whom he calls Bustes). On his road he had been struck by the uneasy state of the country. Every hamlet was in arms, and squadrons of militia met him every day. Preparation for war seemed to be the employment of the people: but he could not learn the cause of all this excitement. At Cordova it was explained to him. A series of events had begun a few months before, which is still far from terminated, which has for nearly twenty years laid waste the fine regions drained by the Plata, and has extended its mischiefs to Europe, and especially to England. These are so important, and so little understood, that they deserve a short outline.

During the period which we have been describing, the Argentine republics, though, as we have seen, often at war with one another, and little controlled, either by their federal obligations or by their local institutions—though submitting to no central authority, and ruled despotically by their governors, until those governors were, from time to time, deposed and shot — yet in general acknowledged the Buenos Ayres government as the representative towards foreign powers of 'the Republic of the united provinces of the river Plata.' In this capacity the Buenos Ayres government, under the presidency of Don Manuel Dorrego (called by Colonel King Don Dorago), terminated the long war with Brazil, by the treaty of the 27th of August, 1828 —a treaty by which each party renounced its claims on Banda Oriental, and guaranteed the erection of that country into an independent state.

General Lavalle, the commander of the Buenos Ayres army employed in Banda Oriental, belonged to a party opposed to that of Dorrego. On his march homewards, after the peace, he announced his intention to overturn the government. Dorrego, and one of his principal supporters, Don Manuel Rosas, who, as the steward of a great estate belonging to the brothers Anchovena, had considerable influence in the province, fled on his approach, and proceeded to collect a force in the country. Lavalle entered Buenos Ayres, on the 1st of December, 1828, proclaimed the existing government to be unworthy of power, and therefore dissolved, and summoned an assembly of the people to elect its successor. In this assembly held, as all popular assemblies in South America are held, under the bayonets of the army, Lavalle was of course elected governor; and the other posts were filled by his officers and creatures.

In the mean time, the troops collected by Dorrego and Rosas became formidable. Lavalle marched out to meet them, defeated them on the 9th of December, and captured Dorrego; and immediately, and without trial of any kind, ordered him to be shot. 'I wish you,' he said in his despatch to the lieutenant-governor of the town, 'to inform the people of Buenos Ayres that the death of Colonel Dorrego was the greatest sacrifice that I could make in their favour.' If Lavalle had had ordinary men to contend with, this victory would have been decisive. The province would have submitted to the apparent will of the capital, and he would have

strutted and fretted his months or weeks on the political stage, until the next revolution drove him into exile or delivered him to the executioner. But Rosas is no ordinary man. His energy, his perseverance, and, above all, his powers of influencing those around him, are of a high order. He refused to submit to Lavalle, fell back on his friends and dependants in the rural districts, and organised, first a faction, and ultimately a real and permanent party.

In a composite state there is always a tendency towards the formation of two great parties — that of those who wish to bind closely under a central government the different communities of which it is composed, and those who wish to keep them separate and independent. We feel the existence of these parties in the British Islands; we see it in Switzerland, in Italy, and in Anglo-America. The more intelligent part of the people, and the leading men of the highest ambition, generally belong to the centralising party. The uneducated, full of local prejudices, local habits, and local jealousies, and the smaller demagogues, whose desires are satisfied by provincial importance, form the repealers.

It was to these feelings that Rosas appealed. He accused Lavalle and his supporters of being Unitarians, that is to say, of desiring to unite the independent Argentine republics into one state, with himself as its dictator. He called himself a Federalist; and proclaimed as his object the relative independence of the different states, with a common organ merely for foreign relations,

and for defence against foreign invasion. The chiefs on neither side had probably any preference for one of these theories of government to the other; but they served as party watchwords, and in a semi-barbarous society, parties once formed are held together by personal hopes and fears, attachments and habits, and may continue to fight, like the Caravats and the Shanavests of Ireland, long after the original cause of quarrel has ceased. And this has been the case in South America. They pillage, murder, and execute one another as Unitarians and Federalists, without really attaching to those words any meaning, except hatred of those bearing the opposite designation. A curious proof of this is, that Rosas, the professed head of the Federalists, is himself in practice a fierce Unitarian. The only real question between him and Lavalle, or between him and Lavalle's successors, is, who is to be the dictator.

In the beginning of the year 1829 fortune was, on the whole, more favourable to the Federalists. Rosas obtained the command of the country round Buenos Ayres, drove Lavalle into the town, cut off its supplies, and created a feeling of hostility to the Unitarians. Lavalle negotiated with him; and on the 24th of June they made a treaty, by which Lavalle was to remain provisional governor of the city, and Rosas captain-general of the country districts, until the people should elect a new government. It was, in fact, a truce and an agreement to share the government during its continuance.

The elections provided for by the treaty of June took

place in July. They were favourable to the Unitarian party, and Rosas refused to acknowledge their validity. He again blockaded the town, and Lavalle submitted to the following compromise. The elections were annulled, the constitution suspended, and the supreme power vested in a new governor and a senate of twenty-four persons. Rosas remained commander-in-chief in the country, and Lavalle in the town; but this arrangement was fatal to the influence of the latter. The suspension of the constitution destroyed his popularity, the new governor and the senate turned against him, Federalist troops were introduced, and his own seduced or frightened away, and he left Buenos Ayres to Rosas, who has ever since continued its master.*

It must have been early this year, while Rosas was blockading Buenos Ayres, that Colonel King entered Cordova. Bustos, the governor, was a Federalist, and while he retained his power the town was Federalist. General Paz, at the head of a Unitarian force, was on his march to attack it. Bustos offered King a command in the Federalist army, which he properly declined, but remained in Cordova to watch the event.

We copy his account of what followed: —

'Paz approached with his army, and halted upon a plain about three leagues from the city. Bustos, preparing for his approach, had taken a position on the north side of the town to which Paz advanced, passing through the town, and went at once into an engagement. The battle was

* This was written in 1848.

severe, and well fought on both sides. The cannonading was distinctly heard at the city. Couriers were constantly flying to and fro, until at length it was announced that Bustos was beaten, and preparations were immediately made to receive the conqueror in an appropriate and respectful manner. Wreaths were prepared, triumphal arches erected, sonnets and addresses in praise of the victorious general were written and conned. On the following day, General Paz entered the town at the head of about fifteen hundred men, and his army became at once the object of universal admiration.' *

This took place on the 22nd of April, 1829, and Paz appears to have remained undisturbed master of Cordova for at least a yea.

During this interval he prepared for the coming struggle, induced Tucuman, Salta, and some minor republics to join the Unitarian faction, and became a rival to Rosas, whom it was not safe to neglect. In the beginning of 1830 Rosas sent against him an expedition under the command of General Quiroga. The peasantry seem to have been generally favourable to the Federalist party. Quiroga penetrated, with little opposition, to the immediate neighbourhood of the town.

Colonel King is a good battle painter, and we will complete our gallery by his picture of the battle of Cordova.

'Quiroga at length approached, and Paz moved with his whole army to the *tablada*, a large plain about two miles from the city, and in full view from the tops of the

* P. 221.

houses. With several others, all well armed, I had taken a position upon the house of one of the state officers, not far from the entrance of the town in the direction of the scene of action, and from this position we witnessed the approach of the enemy's forces, and the position occupied by Paz. At about three-fourths of a mile from that spot, Quiroga halted, for the purpose of forming his infantry; and here it is necessary to explain the practice of that country in the transportation of that arm of their service. The armies of the Argentine are composed mostly of cavalry, yet no general forms an entire corps without having a small corps of infantry attached; and as their field of operation often extends over an area of some hundred leagues, the infantry, for the convenience of rapid transportation, are mounted behind the men composing the cavalry, each horse, so far as the number of the infantry may require, thus "carrying double." When about to go into an engagement, the infantry dismount, and are formed after the manner of their own tactics.

'Quiroga, as I have stated, dismounted his infantry, formed his column at about three-fourths of a mile from Paz, and advanced to the engagement, commencing his deployment at a distance of about half a mile, and presenting the whole force of his cavalry. Paz had every advantage, except that of numbers. Independent of his cavalry and infantry (among whom was a small battalion of negroes, under the command of an Englishman named Wild), he had a small corps of artillery. His men and horses were fresh and well disciplined; and he had chosen

his position on a gentle slope or rise of the *tablada.* 'His infantry, numbering about 1,000, were drawn up in front, flanked on the right and left by the artillery. About two hundred paces in their rear was a line of cavalry, numbering about 2,500, and at a distance of a furlong in rear of this line was a handsome cavalry reserve of 500 men.

'At about three o'clock P.M. the action was commenced by Paz, who set his artillery at play upon Quiroga's column, at the moment that he began his deployment. Its effect was visible; and before the deployment was fairly completed, the right of Quiroga began a rapid movement, evidently intended as a charge upon the infantry of Paz.

'By the haste of his movement Quiroga's lines were already thrown into some disorder; and as his right approached, they were met by a volley from the infantry which turned their direction, carrying slaughter in their ranks, and the succeeding squadrons pressed on under a cross-fire from the artillery. The second assault was met like the first by the infantry of Paz, who, to all appearance, had not yet lost a man, and who stood their ground like statues of marble. In the distance, we could see of them only a long dark line, seemingly almost without motion; and ever and anon, as that line was approached with the threatening aspect of attack, the glitter of their arms was for an instant seen as they levelled their muskets, then shrouded in the smoke of the discharge. Beyond the volume of smoke we could distinctly see its effects. Confusion was apparent, and the horses, wounded by successive volleys, refused to advance again. Quiroga's infantry had

by this time deployed its column in rear of their cavalry, and their general had evidently determined to unmask them, and endeavour at the same time to pass the flanks of Paz's infantry, thus throwing his whole force of about 4,000 cavalry upon his enemy's second line. So it proved; but Paz had anticipated the movement, and was prepared to receive him. In one hour from the commencement the battle became general: infantry were engaged with infantry, aided on our side by the artillery; cavalry with cavalry; and the whole mass became so commingled and shrouded in smoke and dust, that it was impossible to discriminate between the parties. For a long time Paz's reserve remained immovable, but at last we saw them dash into the conflict.

'None could form the slightest opinion upon the chances of success: and, unable at last to bear the excitement and suspense, about twenty of us determined to go to the scene of action, yet without any direct object, except to quell the fever of anxiety. Passing hastily from the town, we ran towards the *tablada*, the roar of the battle growing louder and louder as we approached. Both armies had broken into detachments, and the men were fighting on all hands like bloodhounds. We saw Quiroga; he had thrown off every vestige of his clothing save his drawers, which were rolled up, and fastened about his thighs. Both he and his horse were covered with blood, and altogether they presented an appearance that could be compared to nothing human. Goaded with the prospect of defeat, he dashed from place to place, cutting

down with his own sword such of his troops as quailed or turned for their lives, and leading detachments into the hottest of the fight. Naked as he was, and streaming with the gore that had spurted from his victims upon him, he seemed a very devil presiding over carnage. His troops had already commenced their flight, and were rushing in small bands from the battle in every direction—some halting, and at an auspicious moment dashing again into the fray—some resting, and others again flying for their lives. At sunset the battle was decided. Paz was victorious, and Quiroga fled without a signal of retreat.' *

If this description be a true one—and it has all the detail and distinctness of truth—the South Americans must be capable of making excellent soldiers, notwithstanding all appearances in Mexico to the contrary. Both the attack and the defence seem to have been admirable. The cavalry continued to charge until their horses refused to advance. The infantry withstood them with a coolness which would have done honour to our squares at Waterloo. Both parties displayed not merely the indifference to danger, which we have already remarked, as characteristic of the inhabitants of the Pampas, but the steadiness, which is the highest result of discipline.

After his defeat before Cordova, Quiroga retired to Catamarca, collected a fresh body of troops, again attacked Cordova, and was again repulsed, this time with great slaughter; and Colonel King believes that if Paz had advanced on Santa Fe and Buenos Ayres, the only

* P. 268.

provinces which now remained Federalist, the Unitarian party would have triumphed. He remained, however, at Cordova, in military inactivity, and amused himself with summoning an Unitarian congress at Cordova, and notifying to the foreign ministers at Buenos Ayres, that the government residing in that city did not represent the interior provinces. In the beginning of the next year (1831) Lavalle made an attempt to reenter Buenos Ayres, but was defeated, and his army dispersed. Rosas, with his usual energy, resumed the offensive. He raised an army of nearly 9,000 men — a great force for that country — and directed the main body on Cordova. General Paz advanced to meet it, and Colonel King was confident of success. But while reconnoitring with only two followers, General Paz came across an enemy's patrole; a ball-lasso broke his horse's leg, and he was taken. His army, under La Madrid, the second in command, retreated, first to Cordova and afterwards to Tucuman. Quiroga followed him with a superior force.

'And here,' says Colonel King, 'a singular feature in the warfare of these provinces was strongly illustrated. I allude to the fact that when opposing armies come in contact, such a thing as capitulation without a fight is seldom thought of, no matter what may be the disparity of numbers or position. The position of La Madrid was isolated in every respect; he was cut off not only from succour, but from all hope of succour; he knew that he was the last Unitarian in the field, and that the power of Quiroga was at least treble his own: still he determined to fight it out.

'Quiroga met him near the citadel, where a bloody engagement took place, but, overwhelmed with numbers, the garrison at last gave way and fled to the town. There the contest was renewed with vigour and desperation, but all their efforts at defence were useless; the hordes of Quiroga were powerful, and, having tasted blood, seemed more furious than ever; the squadrons of the last Unitarian commander were broken, and driven from the city; and their leader, with such of his force as escaped, fled in small bands through bye-ways across the province of Salta, and thence escaped into Bolivia.'*

Immediately after the battle 500 of the prisoners were shot; and this, perhaps, accounts for what excites Colonel King's surprise, their not capitulating. Capitulation is being put to death as soon as the enemy is at leisure.

We ought to have stated, in its proper place, that during the government of General Paz, Colonel King married a lady of Cordova — a marriage by which he says that he was immediately transported from a state little removed from absolute poverty to one of luxury and wealth. He retired from the army, but remained in the country, with one interval of absence, until 1841, when, having lost his wife, he returned to the United States.

With the battle between Quiroga and La Madrid, with which the contest between the Unitarians and Federalists ended, ends also the interest and value of Colonel King's book. What remains is chiefly occupied by stories about

* P. 302.

the cruelties of Rosas. Such a subject cannot be made attractive even by the most skillful management. Colonel King has tried to adorn it by long details of conversations obviously imaginary, since no third person was present. His work, as we have it, consists of twenty-six chapters. It would be much improved if all that follow the eighteenth were omitted. We should then have left a curious and instructive picture of anarchical society — of the state into which every people is likely to fall, which throws off the government under which it has grown up, without possessing the habits which enable it to create a substitute, or even to submit to one. As is South America now, so would Ireland be after repeal; — so would have been Greece if she had not been pressed together by the powerful states which control her.

ANECDOTES OF MONKEYS.*

[Quarterly Review.]

THIS is a little jeu d'esprit, from its wit and size very fit to read, but on the latter, perhaps on both, of these accounts, an inconvenient subject for a review; for to dissect it is like carving a lark, and to make extracts is positive plunder. It treats of sailor monkeys, their wives and bears; of Scotch monkeys, and chattering monkeys, of Mr. Joseph Hume; of associated monkeys, of domestic monkeys, of French advocates, and Spanish girls; of powdering monkeys, of emptying a sack of flour on a company of undertakers; of London monkeys, of guardsmen; of tucking up cats in bed, of discovering the interior of Africa; of making a tune of colours and an arithmetic of smells, of political economy, and of metaphysics. As a sample (such a one as a wing is of a partridge), we will convert to our use and that of our readers the two sailor monkeys:—

'The first of these sailed on board a frigate, and, though always in scrapes, was the favourite both of cabin and ward-room, and indeed of every mess except the midshipmen's, being perhaps disliked by these young

* Apology addressed to the Traveller's Club; or Anecdotes of Monkeys. London: 1825.

gentlemen, for the same reason that poor cousins (as a French author observes) are ill seen by us—to wit, for approaching them too nearly in nature.

'All his pranks, however provoking at the moment, seemed only to make him a greater favourite with the crew. The captain himself, who studied pug's happiness as much as the others, and who perhaps thought he might be somewhat steadied by matrimony, was anxious to provide him with a wife.

'For some time the happiness of the wedded pair appeared to be complete; and the frigate sailed upon a summer cruise during their honeymoon. The husband, however, soon grew indifferent; and indifference was soon succeeded by disgust. This was manifested by angry looks, chatter, and even blows, upon the female's persevering in her attentions.

'All were much disappointed and scandalised at the evil success of so promising a union.

'At length, however, an apparent change took place in the husband's conduct, and was hailed with correspondent joy by the ship's company. Their pleasure was, however, of short duration, for the traitor, having one fine day decoyed his wife out to the end of the fore-top-gallant yard, as if to show her something at sea, and sat down with her on the spar, slipt his paw under her sitting part and tumbled her overboard.

'I never shall forget the momentary horror with which this was witnessed by all, with the exception of a French captain, then a prisoner on board, who, turning to the

second lieutenant, exclaimed, "Parbleu, Monsieur, ce drole-là a beaucoup de caractère."

'Another sailor monkey, who came under my cognizance, if he did not show so much character as the first, was certainly a beast of infinite humour. He went to sea, accompanied by a bear, with a relation of mine, who was captain of a small sloop of war, and who professed to take them with a view to keeping his men in good humour — I believe it was to minister to his own amusement. Probably both objects were attained.

'The monkey principally extracted his fun from the bear. This beast, who was of a saturnine complexion, indulged himself much in sleeping on the sunny side of the deck. On these occasions the monkey would overhaul his paws and twitch out any hair which he found matted by tar or pitch, the suffering which to remain seemed to be a great scandal in his opinion.

'At other times he would open Bruin's eyelids and peep into his eyes, as if to ascertain what he was dreaming about. The bear, irritated at such liberties being taken with his person, used to make clumsy attempts to revenge himself; but his persecutor was off in an instant. The rigging was, on these occasions, his place of refuge. Thither he was indeed followed by his enemy; but poor Bruin was but an indifferent topman, and seldom got beyond *lubber's hole.*

'The monkey, on the contrary, was famous for his activity, and for some time was entitled by the sailors, "Deputy-captain of the fore-top."

'He obtained this designation from a very singular practice. Having observed the excitement produced on deck by the announcement of a sail-ahead, which, as well as the chase which followed, seemed to be highly agreeable to him, the fore-top became his favourite station; from whence he made his signals with great energy, chattering with a peculiar scream when any vessel was in sight, and indicating by signs in what direction it appeared.

'Pug continued to volunteer his services for some time in this manner, and constantly found his reward. But, at length, upon the sloop's getting on bad cruising-ground, he found his employment dull, and, by way of enlivening it, amused himself with giving false alarms.

'He was *started* for this by the boatswain's-mate, and lost his rank of Deputy-captain of the fore-top. In lieu of which, moreover, he was new-named *Monk the Marine* — a denomination which he certainly knew to be opprobrious, as he resented it with grimaces, chatter, and, whenever he dared, with blows.

'Though he was fond of the excitement of a chase, he was not supposed to have good nerves, and those who had seen him in action (he was, after the first experiment, always sent below) made but an ill report of his steadiness under fire.

'This poor monkey came to a melancholy end. He had observed a sick lieutenant, who breakfasted after the rest of his mess, making his tea, and being accidentally left alone in the gun-room, determined to imitate him. He however succeeded ill in his mixture; for he infused a

paper of tobacco which was lying on the table into the pot, instead of tea, and afterwards swallowed it with its accompaniments of milk and sugar. This ill-imagined beverage produced the most fearful commotion in his inside, attended with long vomitings; of which he finally died.

'The doctor, who was a materialist and a most quarrelsome fellow (he had killed two brother officers in duels, one for only calling him Dr. Gallipot), attended him with more care than we had expected; but the poor beast (as the purser said) was outward-bound, and could not be recalled.

'The surgeon pronounced that Pug died of *iliac passion*, and announced this as a reason for believing that man was but a better breed of monkey.'

Our author discovers a strong tendency towards the doctrine suggested in the last sentence. Indeed, we question whether he would allow any superiority in man over monkey, except in moral virtue. On that topic his candour (considering that he is a professed apologist) is exemplary. He admits that the general conduct of his favourites must fill them with remorse, if their consciences have not been seared by habitual enormities; and rejoices more than charity will allow us to do in the too probable damnation of Redgauntlet's friend, Major Weir. And if he exempts them from original sin, properly so called, he attributes to them, on the other hand, much sin which he confesses to be highly original.

There have not been wanting, as everyone knows, great

opinions to maintain that the faculties of men and of brutes differ rather in degree than in kind. The delight of a pointer when his master puts on his shooting-jacket, is at least primâ facie evidence that his ideas are associated as well as our own. Who that has heard the stifled bark and whine of a sleeping hound, can deny that he dreams? and, ignorant as we are of the theory of dreams, to dream at least implies memory and conception. And we can ourselves relate an instance, which did not reach us through the ivory gate at which our author dismisses his listeners, where a terrier displayed cunning that would have done honour to an Old Bailey attorney.

Our Oxford readers are probably aware, that dogs are forbidden to cross the sacred threshold of Merton common-room. It happened one evening that a couple of terriers had followed their masters to the door, and while they remained excluded, unhappily followed the habits rather of biped than of quadruped menials, and began to quarrel like a couple of Christians. The noise of the fight summoned their masters to separate them, and as it appeared that the hero of our tale had been much mauled by a superior adversary, the severe bienséances of the place were for once relaxed, and he was allowed to enjoy, during the rest of the night, the softness of a monastic rug, and the blaze of a monastic fire—luxuries which every initiated dog and man will duly appreciate. The next day, soon after the common-room party had been assembled, the sounds of the preceding evening were renewed with tenfold violence. There was such snapping and tearing,

and snarling and howling, as could be accounted for only by a general engagement—

> The noise alarmed the festive hall,
> And started forth the fellows all.

But instead of a battle royal, they found at the door their former guest, in solitude sitting on his rump, and acting a furious dog-fight, in the hope of again gaining admittance among the quieti ordines deorum. We have heard that he was rewarded with both the grandes and the petites entrées; but this does not rest on the same authority as the rest of the narrative.

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